(1)

Supreme Court, U.S.

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UNITED STATES SUPREME COURT

PETITIONER,

THOMAS G. DEAN

V.

RESPONDENTS,

CHASE MANHATTAN MORTGAGE CORP., RESURGENCE MARKETING & REAL ESTATE, FORREST HOMES, US DEPT. OF HUD, US DISTRICT JUDGE WILLIS B. HUNT, AND THE CLAIRMONT LODGE.

PETITION FOR WRIT OF CERTIORARI TO ELEVENTH CIRCUIT COURT OF APPEALS

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THE PETITIONER

Thomas G. Dean

41 pp

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the court of appeals for the eleventh Circuit properly sustained dismissal of complaint against Chase Manhattan Mortgage Corporation for insufficiency of service of process when complaint was served upon Chase Manhattan by the sheriff of the county in which Chase Manhattan hold it's office under rule **4(d) Fed. Rul. Civ. Proc.** as service of summons by the law of the State of Georgia per **O.C.G.A. ss 9-11 -4(c)** ?

(2) Whether petitioner's unopposed affidavits attached to the complaint, fail to state a claim for relief in the claim under **Federal Fair Housing Act, (42 USCA ss 3604-3605 & 3613)** alleging racial discrimination in rental decisions by Clairmont Lodge?

(3) Whether unopposed financial affidavits attached to the complaint fail to state a claim for relief effectively claiming that petitioner was qualified to purchase pro-

perty and was refused by respondents/defendants because of plaintiff's race or sex, in suit under **42 USCA ss 3604-3605 & 42 USCA ss 3613.**

(4) Whether court of appeals for the eleventh circuit properly sustained dismissed complaint against U.S. Dept. of Housing & Urban Developement for lack of subject matter jurisdiction when jurisdiction is alleged to exist under **42 USCA ss 3604-3605 & 42 USCA ss 3613** in light of **28 USCA ss 2679(b)(2)** ?

(5) Whether court of appeals for the eleventh circuit properly dismissed action against Federal judge in which was alleged abuse of process in prior suit under fair housing act as disparate treatment against plaintiff's request for appointment of attorney under **42 USCA ss 3613(b)(1)** in light of **28 USCA ss 1346(b) 28 USCA ss 2679(b)(2) & 2680(h)** ?

(6) Whether plaintiff in fair housing suit is entitle, upon his request, under **42 USCA ss 3613(b)** , to appointment of attorney ?

(7) Whether court of appeals for the eleventh circuit properly sustained the denial of petitioners motion for cost of personal services which was essentially a motion for summary judgement on the claim including costs and attorney fees under rule **56(a) Fed. Rul. Civ. Proc** ?

(8) Whether the court of appeals for the eleventh Circuit properly sustained motion to dismiss for failure to state a claim in absence of answer by any defendant in light of rule **12(h)(2) & 12(c) Fed. R. Civ. Proc.** ?

(9) Whether court of appeals for the eleventh circuit properly sustained the denial of allegations of the complaint in absence of answer by the defendants in light of rule **8(d) & 12(c) Fed. Rul. Civ. Proc.** ?

(10) Whether court of appeals for the eleventh Circuit properly sustained dismissal of complaint for insufficiency of service of process in absence of answer by defendant in light of waiver provisions of rule **12 (h)(1) Fed. Rul. Civ. Proc.** ?

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STATEMENT OF JURISDICTION

On **June 6, 2001** the United States Court of Appeals for the eleventh circuit sustained the dismissal of petitioner action filed pursuant **42 USCA ss 3613** claiming, inter-railia, racial discrimination in financing of residential real estate related transactions in the United States District Court for the Northern District of Georgia Atlanta Division. No petition for rehearing was taken. The jurisdiction of the Supreme Court on Certiorari is invoked under **28 USCA ss 1254(1)** .

CONSTITUTIONAL STATUTES INVOLVED

(i) **28 USCA ss 1254(1)** states as follows:

"Cases in the courts of appeals may be reviewed by the supreme court by the following methods:

(1) By writ of certiorari upon application of any party to any civil or criminal case, before or after rendition of judgement or decree."

42 USCA ss 3605 states as follows:

Discrimination in residential real estate-related transactions

(a) **In General**

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such transaction, or in the terms or condition of such transaction, because of race, color, religion, sex, handicap, familial status, or, national origin.

(b) **Residential real estate-related transaction" defined**

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance-

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(c) **Appraisal exemption**

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race color, religion, national origin, sex, handicap, or familial status.(Pub. Law 90-284, Title VIII, ss 805, Apr. 11, 1968, 82 Stat. 83; Pub. L. 93-383, Title VIII, ss 808(b)(2), Aug. 22, 1974, 88 Stat. 729; Pub. L. 100-430, ss 6(c), Sept. 13, 1988, 102 Stat. 1622.)

42 USCA ss 3613 states as follows:

Enforcement by private persons

(a) **Civil action**

(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or termination of an alleged discriminatory housing pra-

ctice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2 year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon a discriminatory housing practice. This subparagraph does not apply to actions arising from breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 3610(a) of this title and without regard to the status of any such complaint, but if the secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person no action may be filed under this subsection by an aggrieved person with respect to the alleg-

ed discriminatory housing practice which forms the basis for such complaint except for purposes of enforcing the agreement.

(3) An aggrieved person may not commence a civil action under this subchapter with respect to an alleged discriminatory housing practice which forms the basis or a charge issued by the secretary if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(b) **Appointment of attorney by court**

Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may-

(1) appoint an attorney for such person; or

(2) authorized the commencement or continuation of a civil action under subsection (a) of this section without payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear costs of such action.

(c) **Relief which may be granted**

(1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award plaintiff actual and punitive damages, and subject to subsection (d) of this section, the court may grant as relief, as the court deems appropriate, any permenant or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(d) **Effect on certain sales, encumbrances, and rentals**

Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the secretary or civil action under this subchapter.

(e) **Intervention by the Attorney General**

Upon timely application, the Attorney General may intervene in a civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 3614(e) of this title in a civil action to which such section applies.

(Pub. L. 90-284, Title VIII, ss 813, as added Pub. L. 100-430, ss 8(2), Sept. 13, 1988, 102 Stat. 1633.)

28 USCA ss 1346(b) states as follows:

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on or after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or

wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the lawof the place where the act or omission occurred.

28 USCA ss 2679(b)(2) states as follows:

Paragraph (1) does not extend or apply to a civil action against an employee of the Government -

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized. . . .

28 USCA ss 2680 states as follows:

The provisions of this chapter and section 1346(b) of this title shall not apply to -

. . . (h) any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution,

abuse of process, libel, slander, misrepresentation, deceit, or interference with contractual rights: Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claims arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. For the purposes of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. . . .

Rule 8(c)&(d) Fed. Rul. Civ. Proc. states as follows in pertinent part:

. . . " Allegations in a pleading to which responsive pleading is required shall be deemed admitted; and allegation in a pleading to which no responsive pleading

is required shall be deem denied. . . ."

" All allegations of the complaint shall be deemed admitted when not denied in a responsive pleading."

Rule 4(d) Fed. Rul. Civ. Proc.,

in pertinent part:

" Service of process may be made in the manner of effecting service by the laws of the state where the district court is held. . . ."

O.C.G.A. ss 9-11-4(c) *Summons - By whom served*

Process shall be served by the sheriff of the county where the action is brought or where the defendant is found, or by the sheriff's deputy, or the marshal or sheriff of the court, or by such official's deputy, or a citizen of the United States specially appointed by the court for that purpose, or by someone who is not a party and is not younger than 18 years of age and has been appointed as a permanent process server by the court in which the action is brought. . . . When service is to be made within this state, the person making such serv-

ice shall make the service within five days from the time of receiving the summons and complaint: but failure to make service within the five day period will not invalidate a later service. . . .

Rule 12(c) Fed. Rul. Civ. Proc. states as follows:

Motions for judgement on the Pleadings. After pleadings are closed but within such time as not to delay the trial, any party may move for judgement on the pleadings. If on a motion for judgement on the pleadings, matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgement and disposed of as provided in rule 56, and all parties shall be given opportunity to present material made pertinent to such a motion by rule 56.

Rule 12(h)(1) Fed. Rul. Civ. Proc. states as follows: "A defense of lack of jurisdiction over the person, improper venue, insufficiency of service of process is waived (A) if omitted from a motion in the circumstan-

ces described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course."

Rule 4(m) Fed. Rul. Civ. Proc. states:

Rule 12(h)(2) Fed. Rul. Civ. Proc. states as follows: " A defense of failure to state a claim upon which relief can be granted, . . . may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgement on the pleadings, or at the trial on the merits."

STATEMENT OF THE CASE

(1) On August 30, 1999 petitioner filed civilrights action in the United States District Court for the Northern District of Georgia, Atlanta Division claiming that respondent Chase Manhattan Mortgage Corp., Resurgence Marketing & Real Estate Inc., Forrest Homes and The U.S. Dept. of HUD conspire to refuse petition financing to purchase residential real estate because of petition-

er's race. Petitioner's contentions were based upon the fact that the reasons given to petitioner for the refusal to finance petitioner was that petitioner could not produce his last two years of tax returns and because petitioner was a bankrupt debtor and currently paying bankruptcy payments. The petitioner contend that such a denial is racial discrimination because ordinarily and as advertised by most mortgage providers bankruptcy is not ground to refuse mortgage to otherwise qualified applicant, and respondents' demand for tax returns were being used to reduce gross income by expenses claimed on tax return and hence to reduce the buying power of black applicants. Petitioner claim black applicants because all of the tenants and applicants in subject subdivision were black applicants and tenants and the practice of refusing financing to debtors and reducing purchasing power by deducting expenses claimed on tax return was not practice in white subdivisions or by ads of other lenders. .The practice of refusing financing to bankrupt debtors

is prohibited by **11 USC ss 525** and the practice of requiring deductions for expenses from gross income is contrary to **16 CFR ss 203.33** and according, the reasons for discriminating against petitioner is not a ligitimate bona fide governmental interest and while such practices are only directed at black subdivisions the practices are **disparate treatment** and therefore petitioner carry suit coupled with the fact that an employee of the respondents uttered the word nigger toward petitioner while petitioner was applying for housing and financing. (2) In a prior action now pending in the court of appeals petitioner made identical claim against serveral other defendants in the same residential subdivision and in that case as well as the second action petitioner requested appointment of attorney under the provisions of **42 USC ss 3613(b)(1)** and the motion was refused by the court even though petitioner was not indigent. According such refusal to appoint attorney petitioner included U.S. District judge Willis B. Hunt in the action for abuse of process as

the text of **42 USC ss 3613(b)(1)** suggest that appointment of attorney under the section is warranted upon application whether the applicant is indigent. Such is the case, the judge was guilty of abuse of process and desparate treatment in application to appoint attorney.

(3) As a third claim, petitioner claimed that respondent Clairmont Lodge refuse implied contract to continue renting property to petitioner because of petitioner's race. This claim stemmed from Clairmont Lodges offer to continue to rent for an additional period without raising the rent rate and it's reneging therein. Because the race of tenants of the Clairmont Lodge are predominately low-income households minorities, petitioner claimed that race was the cause of the reneging and thus petitioner filed suit under fair housing act of United States **(42 USC ss 3601 et seq)** .

Petitioner also claimed that Clairmont Lodge by it's employees was engaged in obstruction of justice of their parading and hissing in opposition to prior suits filed by

petitioner. Petitioner alleged that such parading and hissing constituted conspiracy or ratification by the paraders of the wrongs complained in in the prior suits.

(4) At the time the complaint was filed petitioner was not aware of the 1993 amendment of **rule 4 Fed. R. C.v Proc.** and requested waiver of service of summons as under form 18A.

(5) The respondents did not respond to the request for waiver and thereafter petitioner caused the summons and complaint to be served by the sheriff of the counties in which the respondents reside as provided by state law and **rule 4 Fed. Rul. Civ. Proc.**

(6) Upon the service of the complaint by the sheriff of the counties where the respondents reside, all of the respondents moved to dismiss action purportedly under rule 12(b)(6) and absent the filing of an answer by any respondents the respondents claimed lack of jurisdiction.

(7) Petitioner opposed the motions to dismiss claiming that the motion was inappropriate filed prior to answer

of respondents **(see rule 12(c), 12(h)(2) Fed. R. Civ. Proc.)**; and the respondents did not state a meretorious defense since alleging failure to state a claim under **42 USC ss 3613** since the respondents donot state a meretorious defense in claiming that petitioner was denied financing because petitioner was bankrupt debtor when by affidavits attached to the complaint, financial affidavit demonstrated that petitioner qualified by petitioner current financial ability even though petitioner was in **chapter 13 bankruptcy** in light of down payment projected by petitioner; petitioner further claimed that **16 CFR ss 203.33** did not require that expenses cited on income tax returns be deducted from gross income since the determination of current financial ability to pay back a loan is determined by an applicant's gross income not net income; that the respondents' reasons for require forbidden requirements for mere racial discrimination.

(8) Petitioner further contended that the court had jurisdiction of the federal respondents under **42 USC ss 3605**

coupled with 42 USC ss 3613 in light of the fact that as petitioner claimed that the constitution or a law of the United States Had been violated of **11 USC ss 525 and 16 CFR ss 203.33** suit under federal tort claims act was is an exclusive remedy and the respondents fit the description of an employee of the United States Government in taking and processing applications for mortgage insurance and offering other HUD benefits and programs.

(9) Petitioner further contended that respondent Clairmont Lodge did not state a meretorious defense since alleging that because a rate hike applied to all residents of the Clairmont Lodge Clairmont Lodge did not discriminate against petitioner and that petitioner did not prove racial discrimination by Clairmont Lodge because no rate hike was promised by Clairmont Lodge in Letter sent to all residents of Clairmont Lodge and that petitioner did not have to prove racial discrimination under Federal Fair Housing Act even though racial discrimination

was alleged in complaint and that the court was required to treat allegations of the complaint as true under **rul. *8(d) & 12(b)*** when the respondents' motion to dismiss was lone paper filed by respondents.

(10) Based upon petitioners contention stated ante-herein and similar contentions petitioner moved for judgement in favor of the petitioner in paper denominated as motion for cost of personal services of the petitioner and filed pursuant to **rule 56 Fed. R. Civ. Proc.**.

(11) After consideration of the papers the district court granted the respondents motions and petitioner appealed to the Eleventh Circuit Court of Appeals.

(12) On appeal the Eleventh Circuit sustained the dismissal of complaint by the district and from such order or judgement petitioner now petition to Supreme Court for certiorari.

REASONS FOR GRANTING CERTIORARI

As noted until, The district court for the northern district of Georgia dismissed the petitioners action under the

Federal Fair Housing Act for failure to state a claim but in absence of an answer being filed in the case. Such action of the district court is contrary to the requirements of **Rule 12(c) Fed. Rul. Civ. Proc.** as rule **12(c)** requires that an answer be filed prior to the courts' granting of motion to dismiss for failure to state a claim. **Branch Int'l Svcs. v. Budde, 1995, 890 F.Supp. 659, aff'd 89 F.3d 832; Rooding v. Peters , 1995, 92 F.3d 578 on remand, 173 FRD 511; Progressive Insurance Com. v. Estate of Crone, 1995, 894 F.Supp. 383 Karsten Mfg. Corp v. Oshman Sporting Goods, 1994, 869 F.Supp. 778; Borough of Sayreville v. Union Carbide Corp., 1996, 923 F.Supp. 671; Carey v. Conrail, 1992, 810 F.Supp. 164; Allstate U.S., 1994, 860 F.Supp. 653; no supreme court cases were located on this subject matter** Likewise, the district court denied the allegations of the complaint when ruling on motion to dismiss for failure to state a claim and again such action of the district court is contrary

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to **rule 8(d) Fed. Rul. Civ. Proc. and 12(b) Fed. Rul. Civ. Proc.** as these two rules require that allegations of the complaint be treated as true and construed in favor of the petitioner. **Conely v. Gibson, 355 US 41, 78 S.Ct. 99, 2 L.Ed.2d 80, Mizell v. N. Broward Hosp. 392 F.2d 580; Bobby Jones Garden Apts. v. Suleski 391 F.2d 172, Robertson v. Johnson, 376 F.2d 43; Muncaster v. Baptist, 367 F.Supp. 1120, aff'd, 507 F.2d 1279; Wetherington v. Phillips, 1974, 380 F.Supp. 426, affirmed 526 F.2d 591;In re Dept. of Energy SWE Lit., 1990, 752 F.Supp. 1441; Darlene L v. Brd. of Ed.,1983, 568 F.Supp. 1340; Mazzula V. MLIC, 1980, 487 F.Supp. 1299; others such like.**

Here, the district court has refused to grant judgement for affidavits attached to the complaint when no counter affidavit was filed by any respondent and such practice by a court is unauthorized under both **rules 12 & 56 Fed. Rul. Civ. Proc.** and is ordinarily not practiced by

Federal Courts see **Gordon v. Watson, C.A. Fla., 1980, 622 F.2d 120; Oglesby v. Terminal Transp. Co., Inc., C.A. Ga. 1976, 543 F.2d 1111; Piper v. US, C.A. Tex. 1968, 392 F.2d 462; Ramsey v. Cooper, 1977, 553 F.2d 237; Harris v. Atlantic Richfield Co. D.C.N.C., 469 F.Supp. 759; Ratner v. Young, D.C. Virgin Islands, 1979, 465 F.Supp. 386; Reube v. Pharmicodynamics, Inc., D.C. Pa. 1972, 348 F.Supp. 900; others such like.**

So, it is the contentions

of the petitioner that the district court for the northern district of Georgia has departed from the usual course of judicial proceedings and the United States Court of Appeals for the Eleventh circuit has sanctioned the district court in such a departure so as to call upon this courts supervisory powers.

Moreover, while the district court dismissed the action for failure to state a claim, the complaint did not fail to state a claim under **42 USCA ss 3604 & 3605 (42**

USC ss 3601 et seq.. In the complaint, plaintiff has alleged generally that the respondents refused to finance rent or aid in a residential real estate related transaction when petitioner's affidavits being tendered to the respondents and attached to the complaint clearly demonstrated that petitioner qualified for benefits and in the amount sought. Petitioner further alleged in the complaint that the refusal to provide benefits to petitioner was undertaken because of petitioner race and sex. Clearly, such allegations from a plaintiff in a Fair Housing suit state a claim upon which relief may be granted under Federal Fair Housing Act because to state a claim under the Federal Fair Housing Act, petitioner need only allege that: (1) petitioner is a member of the protected class or is a member of a racial minority, (2) Petitioner applied for and was qualified to receive financing from the respondents and meet all necessary qualifications, (3) respondents refused to do business with petitioner despite petitioner's financial qualification to pay back the loan, (4) the res-

pondents continue to do business with applicants who have similar financial qualification as the petitioner and (5) the property of which the petitioner sought to purchase remained for sale hereafter. **Asbury v. Brougham, 1989, 866 f.2d 1276; U.S. v. City of Parma, 1980, 494 F.Supp. 1049, Aff'd, 661 F.2d 562; Casa Marie v. Superior Court of Puerto Rico, 1993, 988 F.2d 252; Soules v. U.S. Dept. of HUD, 1992, 967 F.2d 817; Betsy v. Turtle Creek Assoc., 1984, 736 F.2d 983; Halet v. Wend Inv. Co., 1982, 672 F.2d 1305; U.S. v. Mitchell, 1978, 580 F.2d 789; U.S. v. City of Black Jack, 1974, 508 F.2d 1179.others such like**

In the instance case, the United States District Court and sanctioned by the United States Court of Appeals for the Eleventh Circuit has wholly failed to recognized petitioner's prima facie suit under the Federal Fair Housing Act and accordingly, again, the United States Court of Appeals has departed from the normal course of jud-

icial procedure and has sanctioned the lower court in such a departure. Having departed from the usual course of judicial procedure, The United States Court of Appeals has rendered a decision which is in conflict with any other court of appeals and has sanctioned the lower court in such conflict.

Furthermore, the subject lower courts have proposed to make their conflicting ruling a decision on the merits of the litigation when infact motion to dismiss for failure to state a claim does not facilitate a decision on the merits of any subject of litigation. **Knight v. Storex Sys. Inc., 1990, 739 F.Supp. 739; Briggs v. Sterner, 1981, 529 F.Supp. 1155; Stephenson v. Barringer, 1991, 758 F.Supp. 657; McClelland v. Watlin Latter Co., 1990, 729 F.Supp. 1316; Duval Stell Prod. v. Jaraj Dalmatin, 1989, 718 F.Supp. 159; LaRose v. Sponco Mgf., 1989, 712 455, PLC v. James M Bridges Ltd., 1991, 766 F.Supp. 113; Inter-Americas Ins. Co. v. Xycor Sys. Inc., 1991, 757 F.Supp.**

1213; Deem Lockheed Corp., 1989, 749 F.Supp. 53; Newport Components v. NEC Home Electronics, 1987, 671 F.Sup|p. 1525. Thus, evidence is not properly considered on motion to dismiss for failure to state a claim because court is only authorized to review the pleadings or the complaint alone without seeking to reach the merits of the action. Decisions on the merits of subjects are normally obtained on summary judgement or jury trial and the court failed to consider the lone motion for summary judgement filed which was filed by petitioner.

Rule 10 of the rules of the United States Supreme Court provides that the Supreme Court may consider a petition for certiorari where, as here, A court of Appeals has departed from the usual course of judicial proceedings and has rendered a decision that conflict with another court of appeals and has sanctioned a lower court in such departure or conflict that I call upon this court's power of supervision to issue writ certiorari to E-

leventh Circuit Court of Appeals to begin to salve petitions rights of a gross abuse of due process by the lower courts. Likewise, **28 USCA ss 1254** that cases in the court of appeals may be review by certiorari to the Supreme Court before or after judgement and accordingly this case may be review by certiorari upon this application under **28 USCA ss 1654** and review is hereby requested.

Finally, the lower courts demonstrate no compassion to the petitioner for the wrongs done to the petitioner but instead the lower courts attack the petitioner with sacasm. The cases cited in the Court of Appeals order and judgement does not in any way support the court's judgement but instead the precedent cited by the courts would only support petitioners claim against the respondents. For example, the court held that district judge Hunt is immune from suit and therewith citing cases from **42 USC ss 1983** when this is not a **1983** suit against judge Hunt. Judge Hunt may be sued under **28 USC ss**

144. Likewise the lower courts held that HUD is immuned from suit however one of the cases cited in the courts order along with others cited by petitioner clearly demonstrate that HUD is not immune from suit whether the petitioner will be ultimately successful. Court must have jurisdiction even to permit the respondents' defenses if them have any an none was sufficiently presented.

The lower courts' decision was riven along irregularity and therefore donot allow petitioner ground to hope for a recover thus leaving petitioner no legal recourse for wrongs practiced by the respondents. In addition, this is not the only case filed by the petitioner at this time in which the lower courts show no compassion required by constitution and law and a malicious decision which conflict with precedent of the subject of the additional litigation is rendered causing the litigation to become excessively expensive and therefore, as to the foregoing cited ante-herein this petition for certiorari should be **GRANTED**.

Service of process made upon a defendant by the she riff of the county in which the defendant resides or maintain an office is sufficient service under both Federal and State law. **Cannon Mfg. Co v. Cudahy Packing Co, 267 U.S. 333, 45 S. Ct. 250, 69 L.Ed. 634:**

in this case the Supreme Court ruled that service of process is sufficient if the process is served at any of the agencies of a parent corporation regardless of which of the parent corporation's agencies the wrong occurred. So, plaintiff/petitioner was not required to address process to any special person to effect service on an agency of Chase Manhattan Mortgage Corporation. Likewise with respect to service of process on respondent Resurgence Marketing and Real estate, this defendant/respondent waived formal service by submission under rule 12 (g) Fed. Rul. Civ. Proc., and accordingly, the district court had jurisdiction over each defendant in court below and this fact may be amplified in briefing and oral argument in this court.The qualification to purchase a home

while one is a Chapter 13 bankrupt debtor is a privilege secured by 11 USC ss 525 as, where the goverment does not prohibit any activity, engagement in such activity is a privilege distinguished by the fact that there is no prohibition against the activity. Likewise the qualification to withhold income tax returns and information is a privilege secured by 26 USC ss 6103 and neither bankruptcy status nor income tax returns may be used to lessen the purchasing power of prospective homebuyers. A yearly tax statement, such as a W2 forms or 1099 forms are sufficient to establish gross or average gross yearly income and exhibits attached to plaintiff/petitioner's complaint clearly demonstrated that petitioner qualified financially for financing with respect to bankruptcy status provided petitioner's purchasing power was not measured by net than gross income. 16 CFR ss 203.33 only requires that applicant for financing and insurance demonstrate qualifications by a measure of applicant's gross monthly income. Wherefore, petitioner petition's for certiorari.

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

CS.NO._____

UNITED STATES SUPREME COURT

PETITIONER,

THOMAS G. DEAN

V.
RESPONDENTS,

CHASE MANHATTAN MORTGAGE CORP., RESURGENCE MARKETING & REAL ESTATE, FORREST HOMES, US DEPT. OF HUD, US DISTRICT JUDGE WILLIS B. HUNT, AND THE CLAIRMONT LODGE.

PETITION FOR WRIT OF CERTIORARI TO ELEVENTH CIRCUIT COURT OF APPEALS

APPENDIX

THOMAS G. DEAN
3162*F* BRIARCLIFF RD.
ATLANTA GEORGIA 30329
(404) 929-9437
THE PETITIONER

Thomas G. Dean

69 pp

[DO NOT PUBLISH]

THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-14275
Non-Argument Calendar

D.C. Docket No. 99-02218-CV-JEC-1

THOMAS G. DEAN

Plaintiff-Appellant

versus

THE CHASE MANHATTAN BANK,
FORREST HOMES, et al.,

Defendant-Appellees

Appeal from the United States District Court
for the Northern District of Georgia

(June 6, 2001)

Before EDMUNDSON, BARKETT and WILSON,

Circuit Judges.

PER CURIAM:

We find no merit to Thomas G. Dean's Appeal of the dismissal of his pro se amended complaint alleging violations of his civil rights and the Fair Housing Act, 42 USC ss 3601, 1981, 1982, 1985.

The dismissal of the amended complaint against Chase Manhattan Mortgage Corporation without prejudice for failure to effect service of process was not an error because Chase challenged Dean's service upon Chase, a corporation, as required pursuant to Fed. R. Civ. P. 4(h)(1) and (e)(1) within 120 days after filing his amended complaint as required by Fed. R. Civ. P. 4(m). See Schnabel v. Wells, 922 F.2d 726, 728 (11th Cir. 1991); Bowers v. Economation Inc., 208 Ga. App. 661, 663,431 S.E.2d 420,422 (1993); Prisco v. Frank, 929 F.2d 603,604 (11th Cir. 1991).

The district court did not err in dismissing the amended complaint against Clairmont Lodge for failure to state a claim under Fed. R.Civ. P. 12(b)(6) because

Dean's conclusory allegation that Clairmont intended to racially discriminate against him was contradicted by materials upon which Dean himself relied to support his ss 1981 and ss 1982 claims and Dean failed to state a claim under the Fair Housing Act under a theory of racial discrimination by disparate impact. Gonzalez v. Lee County Housing Authority, 161 F.3d 1290, 1300 n. 35 (11th Cir 1998) (ss 1981 claims); Associated Builders, Inc. v. AlabamaPower Co., 505 F.2d 97, 100 (5th Cir 1974); United States v. Mitchell, 580 F.2d 789, 791-92 (5th Cir 1978).

The district court did not err in dismissing the amended against Forrest Homes and Resurgence Marketing & Real Estate, Inc. for failure to state a claim under Fed. R.Civ. P. 12(b)(6) because Dean's conclusory allegation that he was qualified to purchase a home from Forrest and Resurgence is contradicted by materials upon which Dean himself relied to support his Fair Housing Act claim. Herron v. Blackwell, 908 F.2d 864,870 (11

Cir.1990); Associate Builders, 505 F.2d at 100; Conely, 355 U.S. at 45-46; 78S.Ct. at 99, 102.

The court did not err in finding that it lacked subject-matter jurisdiction over Dean's claims against the Department of Housing & Urban Developement/FHA under the doctrine of sovereign immunity because Dean sought money damages against HUD. Raulerson v. United States, 786 F.2d 1090,91-92(11th Cir 1986); Panola Land Buyers Assoc. v. Shuman, 762 F.2d 1550, 1554 (11th Cir 1985); Unimex, Inc v. United States Dept. of Housing and Urban Developement, 594 F.2d 1060, 1061 (5th Cir 1979).

The court did not err in finding that it lacked subject-matter jurisdiction over Dean's claims against Judge Willis B. Hunt under the doctrine of absolute judicial immunity because Dean sought money damages against Judge Hunt for actions took in his judicial capacity. Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir 2000).

{end of page three}

The district court did not abuse its discretion in denying Dean appointment of "Attorney General" or other counsel for assistance with his civil claim under the Fair Housing Act. Shah87 F.3d at 1271; United States v. Bob Lawrence Realty, Inc., 474 F.2d 115, 125 n. 14 (5th Cir.), cert. denied, 414 U.S. 826 (1973); Dean v. Barber, 951 F.2d 1210, 1216 (11th Cir. 1992).

Finally, we conclude that the district court did not err in dismissing Dean's motion for costs as moot after his claims had been dismissed as to all defendants. Fed. R. Civ. P. 55.

AFFIRMED.

{end of page four}

PETITIONER' EXHIBIT "1"

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

THOMAS G. DEAN,

Plaintiff, CIVIL FILE NO.

v. 1:99-CV-2218A-JEC

CHASE MANHATTAN MORTGAGE CORP., FORREST HOMES, RESURGENCE MARKETING & REAL ESTATE INC., UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPEMENT, WILLIS B. HUNT, AND CLAIRMONT LODGE,

Defendants.

ORDER

This case is presently before the court on defendant Clairmont Lodge's Motion to Dismiss [12], defendant Department of Housing and Urban developement's Motion to Dismiss [18], defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion

to Dismiss [20], defendant Forrest Homes Inc.'s Motion to Dismiss [21], defendant Resurgence Marketing and Real Estate, Inc.'s Motion to Dismiss [22], plaintiff's Motion for Cost of Personal Service [28], defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporations's Motion to Extend Time to respond to Plaintiff's Motion for Costs [29], and defendant Willis B. Hunt's Motion to Dismiss [40]. The Court has reviewed the record and the arguments of the parties and, for reasons set forth below, concludes that defendant Clairmont Lodge's Motion to Dismiss [12] should be **GRANTED,** defendant Department of Housing and Urban Develepement's Motion to Dismiss [18] should be **GRANTED,** defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Dismiss [20] should be **GRANTED WITHOUT PREJUDICE,** defendant Forrest Homes, Inc.'s Motion to Dismiss [21] should be **GRANTED,** defendant Resurgence Marketing & Real Estate Inc.'s Motion to Dismiss [22]

should be **GRANTED,** plaintiff's Motion for Cost of Personal Service [28] should be **DENIED AS MOOT,** defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Extend Time to Respond to Plaintiff's Motion for Cost [29] should be **DENIED AS MOOT,** and defendant Willis B. Hunt's Motion to Dismiss [40] should be **GRANTED.**

BACKGROUND

Plaintiff, proceeding pro se, filed suit on sugust 30, 1999 against defendants Chase Manhattan Bank, Forrest Homes,[1]

1 Forrest Homes, Inc. is the company that owned the home that plaintiff attempted to purchase. It is undisputed that Forrest entered into a "purchase Home Agreement" for plaintiff to purchase a home in the

{end of pages one & two}

Resurgence Marketing and Real Estate, Inc., 2 the United States Department of Housing and Urban Developement/FHA, Judge Willis B. Hunt, and Clairmont Lodge. (compl. [1] at 1) In his complaint, plaintiff makes several general allegations against all defendants, arguing that they discriminated against him due to his race in violation of "the Fair Housing Act, 42 U.S.C. ss 3601 et seq." (Id. at P. 2) In addition, plaintiff claims that "defendants" also discriminated against him in violation of 42 U.S.C. ss 1981, 1982 & 1985(c)." (Id) Specifically, plaintiff claims that he attempted to engage in real estate transactions on June 8, 1999, that he met all qualifications for purchasing the property, that "defendants" refused to do business with him and that the property remains available for sale. (Id. at P.3) In addition, plaintiff asserts that "defendants" advertise homes loans available at "1% down & possible 5.5% interest" but refused to render such an interest rate to plaintiff because "defendants" refused to do business with him. (Id. at P.4)

Rivercrest subdivision. Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-1; Forrest Mot. to Dismiss [21] at Ex. A.) According to Micheal Adamson, CEO of Forrest, every homeowner in Rivercrest is black, the same race as plaintiff (Id. at Adamson Aff. at P. 7)

2 Resurgence Marketing and Real Estate, Inc. is the brokerage company that served as the agent facilitating plaintiff's attempted purchase of the Forrest home. (Pl.'s Resp. to Mand Disclosure [2] at Ex. C-1; Forrest Motion to Dismiss [21] at Ex. A.)

{end of page three}

With regard to a separate transaction, plaintiff contends that he attempted to rent an apartment from the Clairmont Lodge on April 26, 1999 for a certain rate. (Id. at P. 5) At some point after accepting the rate plaintiff claims that the Clairmont Lodge changed the rate and committed fraud in violation of "42 USCA ss 3601, 1981, 1982." (Id) In additional, plaintiff alleges that "he has experienced parading outside his apartment at the Claimont Lodge . . . and or verbal assaults because of plaintiff's having complained to the accounting office of Clairmont Lodge about the rate discrepancy." (Id.) Plaintiff also asserts that the "paraders" are parading outside his apartment due to his filing of two previous lawsuits in front of defendant Judge Hunt, 1:98-CV-2901 WBH and 1:99-CV-1127-WBH. (Id.) Finally, plaintiff alleges that these paraders are in front of his apartment " because of racial discrimination against plaintiff." (Id.)

Finally, plaintiff claims that Judge Hunt refused to appoint him an attorney in civil action number 1;98-CV-

2901-WBH "so that defendant Hunt may satisfy his appetite to discriminate against the plaintiff to display his racial prejudice against plaintiff and other minorities." (Id. at P.6.) Plaintiff contends that the denial of plaintiff's motion for appointment of counsel violated his rights under 42 USCA ss 3604(f)(3)(B)." (Id.)

{end of page four}

On October 18, 1999, plaintiff filed a document entitled "Prima Facie Civil Rights Complaint" which purports to be an amended complaint. (Am. Compl. [11] at 1) This document is nearly identical to the original complaint with the substitution of Chase Manhattan Mortgage Corporation for Chase Manhattan Bank (Id.) In every other respect, the complaint is identical. (Compare Compl. [1] with Am. Compl. [11].)

Each defendant has filed a separate motion to dismiss in lieu of filing an answer to plaintiff's complaint. the Court will address each motion in turn, setting out the arguments in support of the motions to dismiss below.

Finally, on December 14, 1999, plaintiff filed a Motion for Cost of Personal Services of Plaintiff. (Pl.'s Mot. for Costs [28] at 1) In this motion, plaintiff request this court to grant him 971,103.95 in costs. (Id.) Plaintiff claims that defendants' failure to file an answer in this case warrants an entry of default against them under "rules 4(b), 4(c) (D), 11, 55, & 56" of the Federal Rule of Civil Procedure. (Id.) As the court has determined that plaintiff has failed to state a claim upon which relief can be granted against any defendant, this motion is **DENIED AS MOOT.**

{end of page 5}

DISCUSSION

I. Clairmont Lodge, Chase Manhattan Mortgage, and Resurgence Marketing and Real Estate's Motion to Dismiss Under Rule 12(b)(5)

Clairmont Lodge, Chase Manhattan Mortgage Company (hereinafter "chase Mortgage"), and Resurgence Marketing and Real Estate ("hereinafter Resurgence") have filed motions to dismiss based upon plaintiff's app-

arent failure to effecuate service of process in accordance with the Federal Rules of Civil procedure. In lieu of personally serving defendants, plaintiff mailed a copy of the original complaint, a summons, a copy of plaintiff's mandatory disclosures, acopy of plaintiff's motion for appointment of counsel, a discovery request, and a request for acknowledgement of service of process by certified mail to the Claimont Lodge at 10108 Cannon Farmhill Rd. Atlanta Georgia 30349. (Pl.'s Aff. of Ret. of Serv. of Process [8] at P. 5, Ex. RS 14.) Likewise, plaintiff mailed the same information to Chase Manhattan Mortgage at 1777 Phoenix Pkwy # 200, Atlanta, Georgia 30349 and to Resurgence at 4064B Nine Mc Farland Drive, Alpharetta, Georgia 30004. (Pl's Aff. of Serv. of Process [8] at Ex. RS2 & RS8; Resurgence Mot. to Dismiss [22] at Ex. A.)

{end of page six}

By sending the "Notice of Acknowledgement of Receipt of Summons and Complaint" form, plaintiff attempted

to comply with Rule 4(d) of the Federal Rules of Civil Procedure regarding "waiver of service."

Upon filing his amended complaint, plaintiff attempted to re-serve defendants Clairmont Lodge, Chase Mortgage, and Resurgence. Instead of relying on the mail this time, plaintiff hired a deputy sheriff to personally deliver a copy of the complaint and summons to Clairmont Lodge's property Management office, to Chase Mortgage' Atlanta office, and to Resurgence's Alpharetta office.

The three defendants claim that plaintiff's first attempt to serve process is insufficient under rule 4(d) of the Federal Rules of Civil Procedure, as plaintiff failed to include a proper waiver of service form under rule 84, failed to include a self addressed, stamped envelope, and failed to enclose two copies of the notice and request for waiver. (See, e.g., Clairmont Lodge's Mot. to dismiss [12] at 2) In addition, defendants contend that plaintiff failed to comply with Rule 4(e) and (h) for service of process on a corporation because he failed to de-

liver a copy of the summons and complaint to an agent authorized to accept service of process and failed to deliver a copy of the summons and complaint to an officer or managing agent of the corporation. (See id. at 3) Moreover, the three defendants contend that plaintiff's renewed effort to serve it with process through the use of the sheriff's deputy was equally faulty, as plaintiff failed to serve the proper agent for receiving service of process. (See Clairmont Lodge's Reply Br. in Supp. of Mot. to Dismiss [19] at 3; Resurgence's Mot. to Dismiss [22] at 6-7.)

It is clear that the waiver of service form failed to comply with Rule 4(d) in two respects.[3] First, plaintiff's mailings were not "addressed directly . . . to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process)" of Clairmont Lodge, Chase Mortgage, or Resurgence. Fed. R. Civ. P. 4(d)(2)(A). Indeed, plaintiff did not comply with Rule 4(d)(2), as he sddresses the notice and

request for waiver to "Clairmont Lodge," "Chase Manhattan Mortgage," and "Resurgence Marketing and Real Estate Inc. " and not specifically to an agent or officer

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3 Chase Mortgage also point out that plaintiff failed to utilize the correct form, under Rule 84, in order to obtain a waiver from the former. Indeed, Form 1A promulgated under rule 84 of the Federal Rules of Civil Procedure is the appropriate form to utilize when attempting to obtain a waiver of service. Moreover, Chase Mortgage notes that plaintiff did not include the pre-addressed and postage pre-paid envelope for return of service as set forth in Rule 4(d)(2)(G) and Form 1A. (Chase Defs.' Motion to Dismiss [20] at 6.)

{end of page eight}

of the corporation. (See Pl.'s Aff. in Supp. of Return of Serv. [8] at Exs. RS2, RS4, RS7, RS8, RS10, RS14.)

Secondly, in his notice, plaintiff incorrectly demanded that the three defendants "complete the acknowledgement part of the form and return one copy of the completed form to plaintiff within 20 days." (Id. at 6) Rule 4 (d)(2)(F) states that the notice "shall allow defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent." Clearly, plaintiff's notice and waiver did not comply with Rule 4(d)(2)(F). In addition, Chase Mortgage Maintain that, in his notice plaintiff stated, " If you do complete and return this form . . . [you] must answer the complaint within 20 days." (Chase Defs.' Mot. to Dismiss [20] at 6) It is clear that Rule 4(d)(3) permits a defendant who timely returns the waiver of service form to answer the complaint within "60 days after the date on which the request for waiver was sent." Obviously, plaintiff may not alter the literal wording of Rule 4(d)(3), and,

if properly served with a notice and waiver form, defendants would have 60 days to answer the complaint. Moreover, it is also clear that plaintiff failed to properly serve any of the three corporations as required by Rule 4(h) of the Federal Rules Civil Procedure. Plaintiff's

{end of page nine}

attempt at personal service by delivering the complaint to Clairmont Lodge's property office is not sufficient under Rule 4(h), as he did not serve the complaint on an officer or registered agent. (Clairmont Lodge's Reply Br. [19] at 3.) Similarly, plaintiff's attempt at personal service of Chase Mortgage fails for the same reason, as plaintiff's agent did not serve a copy of the summons and complaint on Chase Mortgage's registered agent or an officer of the corporation.[4] (See Chase Defs.' Mot. to Dismiss [20] at 7, Ex. A.) The return of service form for Resurgence indicates that the complaint and summons were not served on Resurgence Mot. to Dismiss [25] at Ex. RS21.)

Although it appears that plaintiff did not comply with the requirements of Rule 4(d) in his attempt to obtain waiver of service or the requirements of Rule 4(h) for service upon a corporation, the Court noted that plaintiff is proceeding pro se and has no formal, legal training. Typically, under these circumstances, the court would permit plaintiff to re-serve the defendants who were not served properly or dismiss the claims

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4 Indeed, if plaintiff had checked with the Georgia Secretary of State, he would have realized that Chase Mortgage maintains an agent for service of process in Atlanta. (Chase Defs.' Mot. to Dismiss [20] at 3, 7.)

{end of page ten}

against the unserved defendants without prejudice. See Fed. R. Civ. P. 4(m). In the instant case, however, plaintiff's complaint fails to state a claim upon which relief could be grantedagainst defendants Clairmont Lodge, Resurgence, Forrest Homes, and its complaint, in its current garbled state, does not sufficiently state a claim against Chase Mortgage. Because any re-service would be futile on defendants Forrest Homes, Resurgence, and Clairmont Lodge, the court has granted their motions to dismiss for failure to state a claim upon which relief can be granted. With regards to defendant Chase Mortgage, it is possible that plaintiff could redraft his complaint in a manner that would survive a motion to dismiss. Out of deference to plaintiff's pro se status, the Court will deny without prejudice Chase Mortgage's motion to dismiss on 12(b)(6) grounds, but grant, without prejudice, the motion to dismiss on 12(b)(5) service of process grounds. This result will permit plaintiff to refile a complaint against defendant Chase Mortgage and

properly effectuate service of process.

II. Motions to dismiss for Failure to State a Claim Upon Which Relief Can Be Granted

A. Motion to Dismiss Standard

Under Federal Rule 12(b)(6) a court may dismiss a claim for failure to state a claim upon which relief may be granted.

{end of page eleven}

When deciding whether to dismiss a claim under rule 12(b)(6), a court must construe the complaint in light most favorable to the plaintiff and accept the plaintiffs' allegations of material fact as true. See Beck v. Deloitte & Touche, 144 F.3d 732, 735 (11th Cir. 1998). A court may grant a motion to dismiss if it concludes that plaintiffs cannot prove any set of facts consistent with the complaint which would entitle him or her to relief. See Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984). Defendants bear the very high burden' of showing that the plaintiff cannot conceivably prove any set of facts that

would entitle them to relief." Beck, 144 F.3d at 736.

In addition, "Rule 8 requires that federal courts give pleading a liberal reading in the face of a 12(b)(6) motion to dismiss." GJR Investments, Inc. v. County of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998). Indeed, "[t]his admonition is particularly true when the parties are proceeding pro se. Courts do and should show leniency to pro se litigants not enjoyed by those with the benefit of a legal education." Id. The Eleventh Circuit has cautioned, however, that "this leniency does not give a court a license to serve as a de facto counsel for a party, . . . or to rewrite an otherwise deficient pleading in order to sustain an action." Id. (citation omitted).

{end of page twelve}

B. Clairmont Lodge

In paragraph five of plaintiff's complaint,5 plaintiff alleges that Clairmont Lodge initially quoted one rate for his apartment and, while plaintiff was residing in the apartment, raised the rate. (Am Compl. [11] at P. 5) Plaintiff

claims that Clairmont Lodge's refusal to rent the apartment at the quoted rate constitutes rate fraud 42 U.S.C. ss 1981, 1982, and 3601.

In addition, plaintiff contends that "paraders" made verbal assaults as a result of plaintiff's complaint to the rental office regarding the rate hike. (Am Compl. [11] at P. 5.) Plaintiff asserts that the verbal assaults were directed at him because of his race and because of the fact that he had previously brought two lawsuits. (Id.) In the first of these lawsuits, 1:98-CV-2901WBH, plaintiff sued Peach State Mortgage Company, Great Oak Mortgage Company, and Citizens Trust Mortgage Company. (Pl.'s Br. in Opp'n to Judge Hunt's Mot. for

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5 This is the only paragraph in plaintiff's complaint in which Clairmont Lodge is specifically addressed. (See Am. Compl. [11] at P. 5.) Although plaintiff addressed other claims generally to all defendants, plaintiff has offered no factual basis for connecting Clairmont Lodge to the Rivercrest subdivision. Accordingly, the court will specifically address only those claims explicitly directed at Clairmont Lodge.

{end page Thirteen}

Enlargement of Time [7] at Ex. 1.) In the other lawsuit, 1:99-CV-1127WBH, plaintiff sued Banner Ford, Inc., Mr. Transmission, Inc., and Pep Boys, Inc.

Plaintiff's first allegation against Clairmont Lodge is that Clairmont Lodge committed rate fraud by increasing his rent allegedly in violation of three different federal statutes: 42 U.S.C. ss 1981, 1982, and 3601. To state a claim under ss 1981, plaintiff must prove the following elements: " (1) [t}hat plaintiff is a member of a racial minority; (2) [a] n intent to discriminate on the basis of race by the defendant; and (3) [t]hat discrimination concern an 'enumerated activity' (i.e., one of those activities, or rights, directly or indirectly enumerated in the statute)." Baker v. McDonald Corp., 686 F.Supp. 1474, 1481 (S.D. Fla. 1987), aff'd, 865 F.2d 1272 (11th Cir. 1988). Accord Mian v. Donaldson, Lufkin & Janrette Secs. Corp., 7 F.3d 1085, 1087 (2d Cir 1993); Garg v. Albany Ind. Dev. Agency, 899 F.Supp. 961, 967 (N.D.N.Y. 1995). Section 1981 states:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

{end of page fourteen}

42 U.S.C. ss 1981 (1994). The specific right at issue in the instant case is the right "to make and enforce contracts.'

Plaintiff has clearly plead the first element of his prima facie case by alleging in his complaint that he is black. Clairmont Lodge contends that, in his substantive allegation regarding the increased rate for his apartment, plaintiff failed to properly allege that this rate hike was done because of plaintiff's race. (Clairmont Lodge's Mot. to Dismsss [12] at 7.) A review of paragraph five of plain-

tiff's complaint which includes his allegation of rate fraud against Clairmont Lodge demonstrates that plaintiff did not allege that this rate hike was due to purposeful dis crimination as required under ss 1981.

Indeed, plaintiff attaches an exhibit to his complaint which demonstrates the impossibility of recovery against Clairmont Lodge which describes the Lodge's decision to terminate all previous "Innkeeper-Occupant Agreements" betweenit and its tenants and to begin charging its quests on a day to day or week to week basis.[6] pl.'s Resp. to Mand. Disclosures [2] at Ex. C-4 (February 8, 1999 Letter") at 1)

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6 Because Clairmont Lodge changed from a month to month rate to a week to week rate, plaintiff's rate increased slightly.

{end of page fifteen}

In addition, this letter explains that "each quest will be required to complete a new " 'Guest Registration Form'" including the rate change. (February 8, 1999 Letter at 1.) Accordingly, all quests, regardless of their race, were required to agree to a different rate schedule.

Under ss 1981, a plaintiff may not rely on a disparate impact theory to demonstrate that a defendant discriminated against him. See General Building Contractors Ass' v. Pennsylvania, 458 U.S. 375, 389-91 (1982). Cf. Ferril v. Parker Group, Inc., 168 F.3d 1290, 1300 n. 35 (11th Cir. 1998). Indeed, to state a claim for racial discrimination under ss 1981, a plaintiff must show that the defendant purposefully against plaintiff. See General Building Contractors, 458 U.S. at 391; Ferrill, 168 F.3 d at 472; Gonzalez, 161 F.3d 1300 n. 35. In plaintiff's second affidavit, he claims that Clairmont Lodge's rate hike demonstrated discrimination " especially since the majority of the tenants at [C]lairmont Lodge be black or minorities." (Pl.'s Second Aff. [2] at P. ii.) Linerally

construing plaintiff's second affidavit in conjunction with his complaint, this claim resembles a claim of disparate impact and is insufficient to satisfy plaintiff's burden of pleading facts

{end of page sixteen}

demonstrating that Clairmont Lodge harbored an intent to discriminate against him because of his race in violation of ss 1981.7

Plaintiff includes a sentence in the same paragraph which states that "Clairmont Lodge may be properly joined in this action as a conspirator to display it[s] racial hatred against blacks." (Am Compl. [11] at P 5.) This statement, standing alone, is insufficient to meet plaintiff's burden of "alleg[ing] with specificity facts sufficient to show or raise a plausable inference that the defendant purposefully discriminated against him because of his race." Garg, 899 F.Supp. at 967. Accord GJR Investment, Inc. v. County of Escambia, 132 F.3d 1359, 1368 (11th Cir 1998) ("GJR's allegations of discrimina-

tory intent are deficient . . .. using many broad pejorative words to describe the defendants' intentions without giving any specifics.") Keeping in mind the Court's responsibility to afford leniency to a pro se litigant, the court concludes that plaintiff has not stated a claim under ss 1981 for the alleged rate hike.

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7 Indeed, were plaintiff's grievances actionable, ss 1981 would perclude a landlord from increasing the rent at any premises in which a majority of the tenants were a member of a single race group, as such increases would constitute racial discrimination under ss 1981.

{end of page seventeen}

Similarly, plaintiff's allegation that "paraders" in front of his apartment made slanderous comments about him in retaliation for his complaint regarding the rate increase is likewise insufficient to state a claim under ss 1981. Although the Eleventh Circuit has recognized a claim for retaliation under ss 1981 in the employment contract text, see, e.g., Andrews v. Lakeshore Rehab. Hosp., 140 F3d 1405, 1412-13 (11th Cir 1998), the Court concludes that plaintiff has failed to state a claimbased on the alleged "paraders'" slanderous comments. Moreover, plaintiff alleges only that he complained about the rate hike, not about intentional discrimination and, as such, has not properly alleged that he was engaged in "statutorily protected activity" when he complained to the management of Clairmont Lodge about the rate hike. See Clover v. Total Sys. Servs. Inc., 176 F3d 1346, 1350 (11th Cir 1999). Finally, plaintiff does not identify the paraders nor does he allege that Clairmont Lodge had anything to do with the paraders' actions, failing to establish a casual

connection between the allegedly illegal discrimination and any acts of the Clairmont Lodge. See Morgan v. City of Jasper, 959 F.2d 1542, 1547 (11th Cir. 1992). As such plaintiff has failed to establish a claim for retaliation under ss 1981.

{end of page eighteen}

In addition, plaintiff claims that the "paraders" are creating a "disparate impact outside of plaintiff's aparment which particularly defame plaintiff because plaintiff filed two prior suits in this court." (Am Compl. [11] at P.5) Liberally construed, this claim appears to be another retaliation claim, alleging that the "paraders" are retaliating against plaintiff for pursuing his two other lawsuits. In the first of these two lawsuits, 1:98-CV-2901-WBH, plaintiff sued Peach State Mortgage Company, Great Oak Mortgage Company, and Citizens Trust Mortgage Company.(Pl..'s Br. in Opp'n to Judge Hunt's Mot. for Enlargement of Time [7] at Ex. 1) In the other lawsuit, 1:99-CV-1127 WBH, plaintiff sued Banner Ford, Inc., Mr.

Transmission, Inc., and Pep Boys, Inc. Defendant Clairmont Lodge is not a party to either of these two lawsuits and, as such, cannot logically be retaliating against plaintiff for filing the lawsuits. As plaintiff has been unable to state a cognizable claim under ss 1981 for either the alleged rate hike or retaliation, the court **GRANTS** Clairmont Lodge's motion to dismiss plaintiff's ss 1981 claim. Similarly, plaintiff is unable to state a claim for discrimination under 42 U.S.C. ss 1982 and 42 U.S.C. ss 3601, the Fair Housing Act. Section 1982 states: "All citizens of the United States shall have the same right, in every State and

{end of page nineteen}

Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. ss 1982 (1994). As Judge Thrash recently noted in Farrior v. H.J. Russell & Co., 45 F.Supp.2d 1358, 1367 (N.D. Ga. 1999) "unlike 42 USC ss 1983 which requires state action, Section 1982

also applies to private actors." In addition, Judge Thrasher observed, "Section 1982 is also unlike Section 1983 in the relatively few cases discussing it's application." Id. Cf. Jackson v. Okaloosa County, 21 F.3d 1531, 1538-41 (11th Cir. 1994) ("the full scope of ss 1982 has never been made clear").

While the full scope of ss 1982 may have never "been made Clear," it is apparent that there are similarities between a claim of discrimination under the Fair Housing Act and under ss 1982. See id. at 1543. See also Farrior, 45 F.Supp. 2d at 1367. The only difference between the two claims is that, under ss 1982, a plaintiff must allege that some intentional discrimination took place." Jackson, 21 F3d 1543. Under the Fair Housing Act, unlike ss 1981 and ss 1982, however, a plaintiff is not required to produce evidence of direct discrimination, but may show that the defendants' action created a significant discriminatory effect." Id. See also

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Evans v. Tubbe, 657 F.2d 661, 663 n. 3 (5th Cir 1981): U.S. v. Mitchell, 580 F.2d 789, 791 (5th Cir. 1978).

As ss 1982 requires proof of intentional discrimination, any claims against Clairmont Lodgearising under this statute dismissed for the same reasons that any ss 1981 claims are dismissed.Accordingly the Court **GRANTS** Clairmont Lodge's motion to dismiss plaintiff's ss 1982 claims.

Turning to plaintiff's Fair Housing Act claim, plaintiff alleges that "Clairmont Lodge refused to rent to plaintiff for the quoted rate even though the quoted rate relied on by plaintiff in deciding to continue residing at the Clairmont Lodge. . . . [plaintiff alleges that Clairmont Lodge in refusing to rent to plaintiff for the quoted rate commit rate fraud against plaintiff in violation of 42 US CA ss 3601." (Am. Compl. [11] at P.5) In order to survive a 12(b)(6) motion to dismiss, plaintiff must state a prima facie case of discrimination under the Fair Housing Act. See Farrior, 45 F.Supp. 2d at 1367. "A plain-

Act. The Court notes that the disparate impact theory of recovery is much more difficult to establish than the disparate treatment method. See Pfaff v. U.S. Dept. of HUD, 88 F.3d 739, 747 n.3 (9th Cir. 1996); Moore v. Hughes Helicopters, 708 F.2d 475, 482 (9th Cir 1983). Most courts that have addressed this issue have held that the disparate impact analysis of Title VII is the same analysis to be utilized under the Fair Housing Act. See Harris v. Itahaki, 183 F3d 1043, 1051, 99th Cir. 19 99); Larkin v. Michigan Dept. of Soc. Servs., 89 F.3d 285, 289 (6th Cir 1997); Bangerter v. Orem City Corp., 46 f.3d 1491, 1501 (10th Cir 1995); Doe v. City of Butler.,

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892 F.2d 315, 323 (3d Cir 1989); Potomac Group Home Corp. v. Montgomery County, 823 F.Supp. 683, 693 E.D. Pa. 1992), aff'd 995 F.2d 217 (3d Cir 1993). Although the Eleventh Circuit has not expressly held that a disparate impact claim under the Fair Hous-

ing Act is analyzed in the smae manner as the comparable Title VII claim, the Eleventh Circuit has, on several occasions, applied Title VII framework to a Fair Housing Claim. See Secretary, U.S. Dept. of HUD ex rel. Herron v. Black, 908 F.2d 864, 870 (11th Cir 1990) (applying Title VII McDonnell Douglas burden shifting analysis to Fair Housing Act claim); United States v. Marengo County Comm'n, 731 F.2d 1546, 1559 n. 20 (11th Cir 1984) (comparing Fair Housing Act to Title VII); EEoc v. Miss College, 626 F2d 477, 482 (5th Cir. 1980) (noting "strong similarities between the language, design, and purpose of Title VII and the Fair Housing Act"). see also Massero v. Mainlands section 1&2 Civic Ass'n, 3 F3d 1472,1476 n. 6 (11th Cir 1993)(noting Propriety of utilizing McDonnell Douglas burden shifting analysis for Fair Housing Act claim). Accordingly, the court

{end of page twenty-three}

will utilize the Title VII disparate impact nframe work to

discuss plaintiff's Fair Housing disparate impact claim.

"In a Title VIIrace discrimination disparate impact case, the plaintiff carries the prima facie burden of demonstrating to a court that a particular employment practice disproportionately burdens one racial group over another." In re Employment Discrimination Litigation, 198 F.3d 1305, 1321 (11th Cir. 1999). "A cause of action based upon disparate impact arises where facially neutral rules or policies are applied in a way that affects the protected class differently from other groups." Bryant Woods Inn, Inc. v. Howard County, 911 F.Supp. 918,939 (D Md. 1996). See also Bangerter, 46 F.3d at 1501 ("A disparate impact analysis examines a facially neutral policy or practice, such as a hiring test or zoning law, for its differential impact or effect on a particular group."). "Indeed, it is the disparity between a single policy's different effects on different groups which form the basis of the cause of Action. Thus, where only one group or class of persons is affected by a particular deci-

sion, there is no disparity in treatment between groups and no ' disparate impact.'" Id. Accordingly, there are two elements to a plaintiff's prima facie claim of disparate impact. These are; "(1) the occurrence of certain outwardly neutral practices, and

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(2) a significantly adverse or disproportionate impact on persons of a particular type produced by the defendant's facially neutral acts or practices." Gamble v. City of Escondido, 104 F.3d 300, 306 (9th Cir 1997).

Although it is clear in the instant case that defendant's rental policy has a direct effect on all tenants' rent, plaintiff has not alleged that there is any disparate impact on blacks who are renting or would like to rent rooms at the Claimont Lodge. Plaintiff has not alleged that because of the rate hike, blacks are unable to rent housing in the Clairmont Lodge, nor has he alleged any statistical evidence demonstrating that the percentage of blacks

who could not afford to live in the Clairmont Lodge after the rate increase is larger than the percentage of whites who were similarly priced out of the Lodge.[8]

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8 It is clear that 100% of minority tenants and 100% of non-minority tenants are affected by the rent increase. Plaintiff has merely alleged in his second affidavit that there are more blacks and minorities who live at the Clairmont Lodge than whites. (Pl.'s Second Aff. [2] at P. ii.) "A Prima Facie case is established only if challenged housing practice had a significant disproportionate impact on the minorities in the total group to which it was applied." Williams v. 5300 Columbia Pike Corp., 891 F.Supp. 1169, 1178 (E.D. Va. 1995). In this case, the rent increase had precisely the same effect on rent for all individuals renting, as no individuals were spared the rent hike.

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As the fourth Circuit has explained, an adverse impact "may take one or two forms: "(1) a facially neutral decision may have 'a greater adverse impact on one race than another,' or (2) it may 'perpetuate . . . segregation and thereby prevent . . . interracial association [in the entire community involved].'" Edwards v. Johnston County Health Department., 885 F.2d 1215, 1223 (4th Cir 1989) (quoting Betsey v. Turtle Creek Assoc., 736 F. 2d 983, 987 n. 3 (4th Cir 1984). In this case plaintiff has not demonstrated the impact that this rate hike has had on the availability of lodging for minorities in the Clairmont Lodge, as the alleged impact on all races were the same--everyone experienced a rate increase. See Bryant Woods Inn, Inc., 911 F.Supp. at 940. Cf. Robinson v. City of Friendwood, 890 F.Supp. 616, 622 (S. D. Tex 1995)(concluding that plaintiff failed to state a prima facie claim of disparate impact as "[t]he disputed zoning ordinance, requiring a twenty-five-foot setback from the front property line of all structuresfor residen-

tial use in the city, is neutral on its face and applies generally to all residences of the city"). Accordingly, plaintiff's allegations are insufficient to state a claim under the Fair Housing Act.[9] But cf. Betsey v. Turtle

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9 Otherwise, any landlord that leases to a majority non-white tenant group would be subject to suit under the fair Housing Act any time he raised the rent, even if the rent increase was an across the board increse affecting blacks and whites equally. See Maki v. Laakko, No. 93-Cv-74907-DT, 1994 WL 903893, at *3 (E.D. Mich. July 22, 1994).

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Creek Assoc., 736 F.2d 983, 987 (4th Cir 1984) (concluding that plaintiff stated prima facie case of housing discrimination through disparate impact method by presenting statistics demonstrating that neutral "all-adult conversion program" resulted in the eviction of 74.9 % of non-whites, while only 26.4% of whites were evicted).

Moreover, plaintiff has offered no allegation that supports the inference that Clairmont Lodge actually intended to discriminate. "[A] showing of discriminatory intent under disparate impact requires the the plaintiff give 'some indication . . . which might be suggestive rather than conclusive . . . of discriminatory intent.'" Cruz v. town of Cicero, N. 99-C-3286, 1999 WL 560989 (N.D. Ill. July 28, 1999) (quoting Phillips v. Hunter Trails Community Ass'n, 685 F.2d 184, 190 (7th Cir 1982)). As discussed supra, plaintiff has failed to properly allege that, by increasing the rent, Clairmont Lodge intended to discriminate against blacks or minorities. Hence, the Court

GRANT Clairmont Lodge's motion to dismiss plaintiff's Fair Housing Claim.

C. United States Department of Housing. . . .

The United States Department of Housing and Urban Developement (hereinafter "HUD"), contends that this court lack jurisdiction over plaintiff's claims. (HUD's Motion to Dismiss [18] at 2.) Although plaintiff does not name HUD specifically in the body of his complaint, he claims that all defendants violated four statutes: 42 USC ss 1981, 1982, 1985, and 3601. (Am. Compl. [11] at P.2) Plaintiff does not allege that the United States has waived its sovereign immunity as to these four statutes. Although this failure does not automatically invalidate plaintiff's claims against HUD, the court concludes that the United States has not consented to suit under the four statutes, and, as such, HUD is entitled to sovereign immunity as to plaintiff's claims.

"An action is one against the United States as a sovereign where the judgement sought is to be satisfied from

monies of the federal Treasury, or where the judgement interfers with public administration, or where the judgement's effect is to compel or restrain the goverment's actions." Panola Land Buyers Ass'n v. Shuman, 762 F.2d 1550, 1555 (11th Cir. 1985). The United States is immune from suit unless there has been an unequivocal waiver of immunity. See Daniel v. U. s., 891 F. Supp. 600,

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603 (N.D. Ga. 1995) (Hull, J.) (citing United States v. Nordic Village, Inc., 503 U.S. 30, 32 (1992); United States v. Sherwood, 312 U.S. 584, 586 (1941)). This waiver of sovereign immunity is a prerequisite to subject matter jurisdiction. See id. (citing Sherwood, 312 U.S. at 586). In the instant case, plaintiff seeks actual monetary damages in the amount of $95,000.00 from HUD and $10,000 in additional punitive damages. Com. at 5.)

It is clear that the United States has not waived its sovereign immunity as to claims for monetary damages under ss 1981 and ss 1982. it is well established in this cir-

cuit that the United States has not waived its sovereign immunity to suit under the provision of the civil rights statutes." United States v. Timmons, 672 F.2d 1373, 1380 (11th Cir 19820 (concluding that claims based on violations of sections 1981 and 1982 of the Civil Rights act are barred by sovereign immunity). See also Bernard v. Calejo, 17 F.Supp.2d 1311, 1314 (S.D. Fla. (1998). Likewise, plaintiff's ss 1985 claim is barred by sovereign immunity. See Unimex, Inc. v. United States Dept. of HUD, 594 F.2d 1061, 1061-62 (5th Cir. 1979). In addition, plaintiff's claims under the fair Housing Act, 42 U.S.C. ss 3701, are also barred by sovereign immunity.

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See Timmons, 672 F.2d 1380; Unimex, 594 F.2d 1061. Accord McIntosh v. United States, No. 96-5005, 19 96 WL 534147, at *1 (10th Cir Sept. 20, 1996); Davis v. U.S. Dept. of HUD, No. 95-2586, 1996 WL 46 7650, at * (7th Cir. Aug. 14 1996); Parker v. Bancoklahoma Mortg. Co., No. 93-5253, 1994 WL 170789,

at *2 (10th Cir May 5, 1994); Furtick v. Medford Housing Auth., 963 F.Supp. 64, 71-72 (D.Mass.1997); Weaver v.city of Topeka, no. 94-4224-SAC, 1995 WL 783628, at *5 (D. Kan. Dec. 12 1995). Accordingly, HUD's motion to dimiss is **GRANTED.**

D. Chase Manhattan Bank[10] and Chase Manhattan Mortgage Company

Turning to the substance of the complaint as it related to Chase Mortgage, plaintiff's allegations with regard to Chase Mortgage are rambling. Construing them in the most rational light possible, however, it appears that plaintiff is alleging the following. Plaintiff alleges that on June 8, 1999, he attempted to engage in real estate transactions. (Am Compl. [11] at P.3) Plaintiff alleges that he met all qualifications to engage in real estate transactions, that "defendants"

10 Chase Manhattan Bank is not named in plaintiff's Amended Complaint and, as such, is not a defendant in instant lawsuit. (see Am. Compl. [11] at 1.)

Accordingly, Chase Manhattan Bank's motion to dismiss is **GRANTED.**

{end of page thirty)

refused to do business with him, that "defendants" continue to do business with applicants with similar qualifications as plaintiff, and that the property which plaintiff was attempting to purchase "remained available for sale. " (id) Moreover, plaintiff alleges that "defendants" advertise a home loan available at 1% down [and] possible %5.5 interest" but "refused to render such to plaintiff." (Id. at P.4.) Further, plaintiff alleges that "defendants" "relayed a different rate than that relayed to the general public or prospective white homebuyers." (Id.) Plaintiff also claims that "the defendants intentions be to inflict intra-racial discrimination upon the olaintiff by conspiracy." (Id. at P.2) Plaintiff brings this claim under "42 USCA ss 1981, 1982 & 1985(c)" and Fair Housing Act. (Id.) Liberally construed, it seems as if plaintiff is attempting to allege a claim of discrimination in lending in violation

of the Fair Housing Act. See Ivey v. U.S., 873 F.Supp. 663, 671 (N.D. Ga. 1995). Section 3605 of the Fair Housing Act Section 3605(a) provides:

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such transaction, because of race, color, religion, sex, handicap, familial status, or national origin. {end of page thirty-one}

42 USC ss 3605(a) (West 2000)(emphasis added).

As the plain words of the statute makes clear, a plaintiff must prove a racial motivation for the adverse action in question to prevail and must likewise allege a racial motivation to state an actionable claim. See Sofarelli v. Pinellas County, 931 F.2d 718, 722-23 (11th Cir1991) (dismissing Fair Housing Act Claim against sheriff because no allegations of racial animus but permitting claim against plaintiff's neihbors because plaintiff properly alleged

facts sufficient to support a reasonable inference of discrimination). The elements of a prima facie case[11] under the fair housing act are that: (1) the plaintiff is a member of a racial minority; (2) the plaintiff applied for and was qualified to purchase the house in question; (3) the defendant rejected the plaintiff; and (4) the house remained available thereafter.

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11 Were this case proceeding to summary judgement, the three-part burden of proof test developed in McDonnell Douglas would govern the case. See Secretary, U.S. Dept. of HUD-Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir 1990). Under that test, "the plaintiff has the burden of adducing evidence to support a prima facie case of discrimination. Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to articulate some ligitimate, nondiscriminatory reason' for it action. Third, if the defendant satisfies this burden, the plaintiff has opportunity to produce evidence that that the legitimate reasons asserted by the defendant are in fact mere pretext." Id.

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See Secretary, U.S, Dept. of HUD ex rel. Herron v.

Blackwell, 908 F.2d 864, 870 (11th Cir 1990).

Although plaintiff alleges that he is black and that the house remained available at some point after the events in question, his allegation of the remaining elements are unclear. As to the third element--that "defendants" rejected the plaintiff--plaintiff alleges that "defendants refused to do business with him." (Compl.[1] at P. 3.) The court is not clear as to what defendant means by this allegation. The Court assumes that this third element requires that the defendant either turn down the plaintiff's application or refused to receive a fully completed application. Yet, in attachments filed by plaintiff, he seems to suggest that he never even made application for a loan because defendant Chase Mortgage required, as part of an application, the applicant's past income tax returns to confirm his claimed income and plaintiff, feeling such a request to be unreasonable, refused to provide such requested paperwork.[12] See Stmt. of Legal Issues [2] at

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12 In another afffidavit, however, plaintiff indicates that he was called back to the bank to complete his loan application, after someone affiliated with one of the defendants had earlier expressed concern about plaintiff's ability to handle the mortgage payments, given his current Chapter 13 bankruptcy status.(Pl.'s Fifth Aff. [2] at P. 7.)

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P.4; Pl.'s Fourth Aff. [2] at 2-3.) If the court inference is correct, then plaintiff never even applied for a loan and consequently could not have been rejected by defendant Chase Mortgage Hence, as plaintiff does not even allege that he applied for a loan through Chase Mortgage and was declined, his complaint omits allegations sufficient to support this element.

Moreover, in paragraphs one through four of his complaint, plaintiff does not specifically name Chase Mortgage; rather, he simply alleges that all "defendants" refused to do business with him. Without explaining the role that each defendant played in depriving plaintiff of his rights, plaintiff has not given "sufficient detail" to defendants or the Court as to the context of his claims against

each defendant.[13] See Malone v. Chambers County Bd. of Comm'rs, 875 F.Supp. 773, 790-91 (M.D. Ala. 1994) (finding plaintiff's complaint "failed to adequate allege with requisite specificity the facts which amount to a violation of his . . . rights by individual defendants"). See also Coon v. Ga. Pac. Corp., 829 F.2d 1563, 1569 (11th Cir 1987) (citing Uptown People's Community Health Servs. v. Bd. of Comm'rs of Cook County, 647 F.2d 727, 739 (7th Cir

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13 It is doubtful that Judge hunt a federal judge, was in the business of offering financing for potential homebuyers

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1981))(count in complaint to indefinite; "[w] hile its true that 'notice pleading' is an integral part of the federal rules governing pleading, it still is necessary that something be stated that apprises a defendant of the substance of the allegation"); Ogletree v. McNamara, 449 F.2d 93, 98-99(6th Cir. 1971)("[s]omething more than a conclu-

sory allegation of systematic racial discrimination is required")).

Most Importantly, plaintiff must allege that defendants took adverse action against him with regard to a loan application because of his race. See 42 USC ss 3605. While his complaint contains some conclusory language suggesting "intra-racial discrimination," (Compl. [1] at P. 2), plaintiff does not specifically allege that defendants took whatever action it took against plaintiff because of the latter's race or, more precisely, that defendant Chase Mortgage treated white applicants better or differently than it treated defendant. Inded, in his response to defendant Chase Mortgage's motion to dismiss, plaintiff makes clear his belief that defendant was not receptive to plaintiff's desire for a loan because plaintiff did not or could not provide income tax returns for the last two years. (Pl.'s Resp. Br. [26] at 4-5)[14] While

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14 In his fourth affidavit, plaintiff suggest that Chase Mortgage did was not receptive to plaintiff's loan

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plaintiff is emphatic in his disagreement with defendant regarding the need for such returns or the appropriate-ness of defendant's request, plaintiff has, in no way, sug gested that this was a requirement that defendant aimed only at black mortgage applicants. Indeed, as every homeowner in the subdivision where plaintiff 's desired home was located was also black and as every one of these black homeowners presumably had to go through the same application process with defendant Chase Mortgage, it is difficult to discern how plaintiff could conceivably make out a case of racial discrimination by defendant Chase Mortgage, either on a discriminatory intent or discriminatory impact theory.

Moreover, plaintiff, in his fourth affidavit, alleges that Ms. Sonjia Williams referred to plaintiff "as a nigger." (Id.)

In this affidavit, plaintiff does not discuss for whom Ms. Sonjia Williams worked at the time that she made this allegedly inflammatory statement, however.[17] Accordingly, plaintiff

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inquiry because plaintiff is a chapter 13 "bankrupt debtor. " (Pl.'s Fourth Affidavit [2] at 2-3.) As discussed supra, however, this allegation, standing alone, is insufficient to state a claim under the fair housing act as plaintiff has not alleged that any concerns by defendant about plaintiff's financial stability reflects racial animus.

17 It appears that Ms. Williams actually worked for Resurgence Marketing & Real Estate, Inc., and not chase

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cannot attribute this racial charge statement to any employee of Chase mortgage for purposes of alleging direct evidence of discrimination. Hence, plaintiff cannot state a claim against Chase Mortgage under the Fair Housing Act based on these conclusory allegations.[18]

Finally, in the complaint, plaintiff alleges that Chase Mortgage refused to finance his purchase of a home due to the fact that " Plaintiff having file prior suit to this

one under the Federal Fair Housing Act." (Am Compl. at P.2.) As discussed supra, the previous federal lawsuits were not filed against Chase Mortgage, and, as a practical matter, Chase Mortgage has no interest in retaliating against plaintiff for filing prior lawsuits. Accordingly, this allegation cannot support a claim under the civil rights statutes or the Fair Housing Act. Moreover, plaintiff's contention that "defendants' intentions are heard in murmerings and by disparate impact immediately outside of plaintiff's apartment"

Mortgage. Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-9.)

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18 Likewise, plaintiff has not alleged sufficient facts to support an anologous claim under 42 USC ss 1981, 1982 and 1985. See GJR Invst. 132 F3d at 1368; Oladeinede v. City of Birmingham, 963 F2d 1481, 1485 (11th Cir 1992); Garg, 899 F.Supp. at 967. see also discussion supra at 30-35.

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likewise cannot support a claim under any of the four

statutes at issue in the instant case. Hence, for all the above reasons, Chase Mortgage's motion to dismiss for failure to state a claim is well-grounded.

Given the garbled and unclear nature of plaintiff's allegations and in deference to plaintiff's pro se status, however, the court will base its dismissal on plaintiff's failure to properly serve defendant Chase Mortgage. See discussion supra at 6-11. Such a dismissal is without prejudice, which means that plaintiff will have the opportunity to redraft a complaint that sufficiently pleads all necessary allegations and to properly serve that complaint on defendant chase Mortgage.[19] See Fed. Rul. Civ. Proc.4(m) ("If service of the summons and complaint is not made upon the defendants within 12o days after the filing of the complaint, the court, upon motion

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19 That plaintiff may be able to file a new complaint does not mean that he should do so. he has already incurred costs to the prevailing parties, pursuant to 28 USC ss 1920, if these parties choose to file a bill for these cost.

If plaintiff refiles against Chase Mortgage and loses again, he will incur further costs. In addition, plaintiff's complaint against Chase Mortgage appears to border on the frivolous. If plaintiff's only grievance is that chase require him to submit income tax returns, that request does not suggest racial animus or a disparate racial impact. If plaintiff refiles, relying on that theory the court will consider the imposition of attorney's fee against plaintiff for the filing os a frivolous complaint.

{end of page thirty-eight of forty-four}

. . . shall dismiss the action without prejudice as to that defendant.") and Fed. Rul. 12(b)(5) (permitting court to dismiss action for insufficiency of service of process"). See also Hunt v. Department of Air Force, 29 F.3d 583 (11th Cir 1994)(affirming district court's dimissal without prejudice for plaintiff's failure to effectuate service of process upon defendant). Accordingly, defendant Chase Mortgage's Motion to Dismiss on service of process Grounds is **GRANTED;** its motion to dismiss for failure to state a claim is **DENIED WITHOUT PREJUDICE.**

E. Forrest Homes and Resurgence Marketing and Real Estate

For some of the reasons discussed supra, plaintiff's claims against Forrest and Resurgence must fail as they contain nothing other than conclusory allegations of racial discrimination. More importantly, although plaintiff alleges in his complaint that he was qualified to purchase the home from Forrest through Resurgence, the documents plaintiff submitted in support of his complaint clearly demonstrate that he was not qualified to purchase the home. (Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-1.) Indeed, one of the qualifications required to purchase a home is the ability to pay for the home. (See id.; Forrest's Mot. to Dismiss [21] at

{end of page thirty-nine of fourty-four}

Ex. A.) cf Williams v. 5300 Columbia Pike Corp., No. 95-2964,1996 WL 690064, at *3 (4th Cir Dec. 3, 19 96) (plaintiff failed to establish claim under the fair housing act as a matter of law because plaintiff failed to de-

monstrate that she was able to pay the purchase price or obtain sufficient financing to purchase). Plaintiff's complaint and related pleading make clear that plaintiff did not have the requisite purchase price and did not acquire financing sufficient to purchase the home.[20] (See Pl.'s Fourth affidavit at 2-3; Am Compl. [11] at P.4.) without the sufficient funds to purchase the home, plaintiff cannot demonstrate that he "met all relevant qualification" to purchase the home. See Hickson, 805 F. Supp. at 1572.

As the fourth Circuit has noted, "[T]he Fair Housing Act is not so expansive that it would require sales or rentals of residences to those who concede that they are unable to pay the price faced by all other buyers or leasers." Williams, 1996 WL

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20 Plaintiff, in his fourth affidavit, suggest that he had the proper income to obtain financing for the purchase of the home, but because of the lenders' insistence on utilizing his income tax returns, he was not able to obtain a

loan. (Pl.'s Fourth Aff. [2] at P.4) This fact, however, does not change the fact that plaintiff was not qualified to purchase the home, as he did not obtain financing, a stated condition precedent to Forrest's duty to perform under the sales contract. (See Pl.'s Resp. to Mand. Disclosures [2] at Ex. C-1; Forrest Mot. to Dismiss [21] at Ex. A.)

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690064, at *3. In the instant case, plaintiff concedes that he was unable to obtain financing and, as such, could not tender the purchase price for the house. Accordingly, plaintiff's claims against Forrest and Resurgence[21] under the Fair Housing Act must be dismissed. Similarly, plaintiff has not sufficiently alleged claim under 42 U.S. C. ss 1981, 1982, and 1985, and those claims must be dismissed as well.[22]

F. Judge Hunt

Judge Hunt claims that he is shielded from liability on grounds of judicial immunity. Indeed, it has long been established that members of the judiciary are entitled to absolute in civil suits against them for monetary

21 Although plaintiff's allegation in his fourth affidavit that a Resurgence employee, Ms. Williams, called him a nigger, could support an inference of discrimination in the appropriate case, plaintiff's claim fails because he has not properly alleged facts to support his prima facie case of housing discrimination, as his allegations, coupled with the materials submitted along with his complaint, conclusively demonstrate that plaintiff was not qualified to purchase the home due to his inability to obtain financing. Thus, even assuming that Ms. Williams harbored racial animus against plaintiff, her subjective feelings are beside the point as plaintiff had no money to pay for the house. (Of course, as noted supra, it is difficult for plaintiff to make out a claim of racial dicrimination in the instant case, where every purchaser of a home in the Rivercrest sub division was black.)

22 In addition, plaintiff has not stated a valid retaliation claim for the reasons discussed supra at 17-19,37

{end page forty-one of fourty-four}

damages.[23] See Pierson v. Ray, 386 U.S. 547 (1967). See also Dorman v. Simpson, 893 F.Supp. 1073, 1080 (N.D. Ga. 1995)(Hull, J.0. In Stump v. Sparkman, 435 U.S. 349, 362 (1978), the supreme court adopted a two-part test to determine whether a judge enjoys the

absolute immunity of the doctrine of judicial immunity. First, the court must look to whether the judge dealt with the plaintiff in judicial capacity. Id. Second the court must decide if the judge acted in clear absence of all jurisdiction." Id. at 357. See also Harris v. Deveaux, 780 F.2d 911 (11th Cir 1986).

To determine whether a judge's conduct constituted a judicial act, the court must focus on whether:

(10 the precise act complained of . . . is a normal judicial function; (20 the events involved occurred in the judge's chambers; (3) the controversy centered around a case pending before the judge; and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity.

Harris, 780 F.2d at 914 (citing Harper v. Merckle, 638 F.2d 848 (5th Cir 1981)). In this case, all of the factors are present. Judge Hunt's pertinent conduct, failing to appoint an attorney to represent plaintiff in case number

1:98-CV-2901-WBH, was a

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23 In the instant case, plaintiff seeks $95,000 in actual damages and $10,000 in punitive damages from Judge Hunt. (Am Compl. [11] at 5.) Plaintiff does not seek injunctive relief against Judge Hunt.
{end of page forty-two of fourty-four

normal judicial function in a case pending before the judge, occurred in orders issued by the judge, and arose from dealings with the judge in his official capacity. See Rolleston v. Eldridge, 848 F.2d 163 (11th Cir 1988) As such, Judge Hunt's actions meet the first part of the test for judicial immunity.

The second prong of the test explores whether the judge acted in the "clear absence of all jurisdiction" The ruling by judge Hunt was in response to plaintiff's motion to appoint counsel. (Am. Compl. at P.6.) The applicability of judicial immunity does not depend on the determination of nice question of jurisdiction.'" Id. (quoting Williams v. Sepe, 487 F.2d 913, 914 (5th Cir 1973)). Since Judge Hunt simply responded to a motion filed in

his court, he did not act in the "clear absence of jurisdiction." As Judge Hunt is entitle to full judicial immunity under the two-part test of Stump v. Sparkman, plaintiff's claims for damages against him must be dismissed.

CONCLUSION

For the foregoing reasons, defendant Clairmont Lodge's Motion to Dismiss [12] is **GRANTED** , defendant Department of HUD's Motion to Dismiss [18] is **GRANTED**, defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Dismiss [20] is **GRANTED**

{end of page fourty-three of fourty-four}

WITHOUT PREJUDICE, defendant Forrest Homes, Inc.'s Motion to Dismiss [21] is **GRANTED**, defendant Resurgence Marketing and Real Estate, Inc.'s Motion to Dismiss [22] is **GRANTED,** plaintiff's motion for cost of personal service [28] id **DENIED AS MOOT,** defendant Chase Manhattan Bank and Chase Manhattan Mortgage Corporation's Motion to Extend Time to

Respond to Plaintiff's Motion for costs [29] is **DENIED AS MOOT,** and defendant Willis B. Hunt's Motion to Dismiss [40] is **GRANTED.**

The CLERK is directed to CLOSE this case.

SO ORDERED, this 27 day of July, 2000.

signed:

JULIE E. CARNES
U.S. DISTRICT JUDGE

{end of page fourty-four of fourty-four}

IN THE UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 00-14275

District Court Docket No.
99-12218-CV-JEC-1

Thomas G. Dean
Plaintiff-Appellant

Versus

The Chase Manhattan Bank,
Forrest Homes,
Resurgence Marketing & Real Estate Inc.,
U.S. Department of Housing & Urban Developement,
Willis B. Hunt, Clairmont Lodge,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGEMENT

It is hereby ordered, adjudge, and decreed that the attached opinion, included herein by reference, is entered as the judgement of this court.

Entered: June 6, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elain

ISSUE AS MANDATE
JUL 30 2001
U.S. COURT OF APPEALS
ATLANTA, GA.

COPY

Supreme Court, U.S.
FILED
OCT 13 2001
OFFICE OF THE CLERK

(3)

CS.NO. 01 - 356

UNITED STATES SUPREME COURT

PETITIONER,

THOMAS G. DEAN

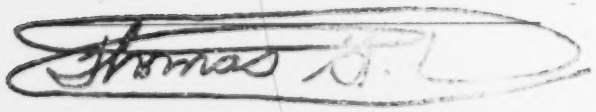
V.

RESPONDENTS,

CHASE MANHATTAN MORTGAGE CORP., RESURGENCE MARKETING & REAL ESTATE, FORREST HOMES, US DEPT. OF HUD, US DISTRICT JUDGE WILLIS B. HUNT, AND THE CLAIRMONT LODGE.

SUPPLEMENTARY BRIEF FOR PETITIONER

THOMAS G. DEAN
3162*F* BRIARCLIFF RD.
ATLANTA GEORGIA 30329
(404) 929-9437
THE PETITIONER



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Keeney v. Kemper Nat'l Ins. Co., (1997) 960 F.Supp. 617; Gilligan v. Jameco, (9th Cir., 1997), 108 F.3d 246; Lauer Farms Inc v. Waushara County Bd. of Adj., (1997), 986 F.Supp. 544; Alliance for Mentally Ill v. City of Naperville, (1996), 923 F.Supp. 1057; Robinson v. City of Friendswood, (1995), 890 F.Supp. 616; U.S. v. Mass. (1996) 910 F.Supp.21; Ring v. First Interstate Mortg. Inc., (8th Cir. 19930, 984 F.2d 924.....10

Case No. 01-356
United States Supreme Court

Petitioner,

Thomas G. Dean

vs.

Respondents,

Chase Manhattan Mortgage Corporation, Resurgence, Marketing & Real Estate, Forrest Homes, United States Department of Housing Urban Development, United States District Judge Willis B. Hunt and the Clairmont Lodge.

Supplemental Brief in Support of Petition for Certiorari

The government has waived its right to follow a brief in opposition to the petition for certiorari. Pursuant to rule 15.2 of the rules of the Supreme Court, the briefing opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the court if certiorari were granted. Counsel are admonished that they have an obligation to the court to point out in the brief in opposition and not later any perceived misstatement made in the petition. any objection to the consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waive unless call to the court's attention in a brief in opposition.

Rule 15.4 of the rules of the Supreme Court provides that any objection to the jurisdiction of the court to grant a petition for certiorari shall be incl-

uded in the briefing opposition. Accordingly where no brief in opposition is filed to a petition for certiorari the allegations of the petition may deem to be true by the court and stating the facts presented for review. With respect to the jurisdiction of the court, as Article III § 2 of the United States Constitution provides for appellate review of the case in the Supreme Court, and 28 U.S.C § 1654 provides for such appellate review by writ of certiorari. In so much as the plaintiff has alleged in the petition that the lower courts dismissed the action for lack of jurisdiction this court has further jurisdiction to review the case under 28 U.S.C. § 2105 as matters involving jurisdiction are appealable issues. Likewise, whether plaintiff alleges that the lower courts have departed from the usual course of judicial proceedings this court has jurisdiction under 28 U.S.C. § 2106 which provides that the Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set-aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order or require such further proceedings to be had as may be just under the circumstances.

There was no question as to the jurisdiction of the lower courts as 28 U.S.C. § 2671 through 2680 provides an action could be brought against Department of Housing and Urban Development as remedial step prior to suit against the United States for torts. 28 U.S.C. § 2675. Likewise judgment could have been sued under 28 U.S.C. § 2679 (b) which provides for an action against an officer, employee or agent of the government, whereas here, the plaintiff alleges that the act of the officer employee or agent violated constitutional & LAWS of United States. See Dugan V. Rank, 372 U. S. 609, 83 S.

Ct. 999, 10 L.Ed.2d 15; also see Larson v. Domestic and Foreign Commerce corp., 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628; also Hoston vs. Silbert, (1982) 220 App. D.C. 361, 681 F.2d 876; on remand, D.C. 566 F. Supp. 11 25; Metz v. US, 11th Cir. 1986, 788 F.2d 1528; 117 F.3d 495, 11 FL W Fed. C 186, Moore v. Vauder, 1995, App. D.C., 65 F.3d 189; A judge is an employee of the United States under 28 U.S.C. § 2671, and where the attorney general has not certified that the judge was acting within the scope of his employment, action is appropriate against an employee's estate. Thus the Supreme Court ruled in Dugan v. Rank, cited supra, the United States is not liable for the ultra virus acts of its employees, even when done in their official capacity. Jurisdiction in such acts may be sufficiently invoked under the civilrights laws of the United States such as 42 U.S.C. § 3604(f)(3)(B) and 42 U.S.C. § 1981 and so much as the petitioner claim abuse of civil process say 28 U.S.C. § 1343.

It is so much as dismissal of for lack of jurisdiction under civilrights laws is equated as dismissal for failure to state a claim, the lower courts could not dismiss for lack of jurisdiction, under federal rule civil procedure 12(c), nor 12(b).

Rule 12(c) provides in pertinent part:

"after pleadings are close but within such time as not to delay trial, any party may move for judgment on the pleadings...."

Dismissal under rule 12(c) cannot be sufficiently accomplished whereas here, the respondent filed no answer to the claim. Rule12(c) Fed. Rul. Civ. Proc., See Branch International Services vs. Budde,

1995, 890 F. Supp. @ 659, see also, 173 FRD @ 511; Progressive insurance Co. Inc. vs. Estate of Crone, 1995, 894 F. Supp. @ 383; Karsten Manufacturing Corp. vs. Oshman Sporting Goods, 1994, 869 F. Supp. @ 778 Borough of Sayreville vs. Union Carbide Corporation, 1996, 923 F. Supp. @ 671; Carey vs. Conrail, 1992, 810 F. Supp. @ 164; Allstate vs. United States, 1994, 860 F. Supp. @ 653.Accordingly, the District Court was acting without jurisdiction to dismiss for failure to state a claim in absence of an answer from the defendant/ respondents, and the court of appeals was without jurisdiction to sustain such a dismissal from the District Court.

As was stated in the petition for writ of certiorari the complaint did not fail to stay to claim upon which relief can be granted under Federal Act Housing. The complaint is setout below:

In the United States District Court
for the Northern District of Georgia
Atlanta Division

Plaintiff,

Thomas G. Dean

vs. Civil File Number
1:99-cv- 2218

Defendants,

Chase Manhattan Mortgage Corporation, Forrest Homes, Resurgence Marketing & Real Estate Inc., United States Department of Housing & Urban Development & Willis B. Hunt & Clairmont Lodge.

Prima Facie Civilrights Complaint

(1) Plaintiff is a 37-year-old black man who resides at 1304 Cannon Farmhill Road Decatur Ga.

30329. Plaintiff makes this complaint upon personal knowledge of the plaintiff.

(2) The defendants, collectively, tend to discriminate against the plaintiff because of the plaintiffs race and against plaintiff because of plaintiff having file prior suit to this one under the federal fair housing act. Defendants means to be that an act of unfairness towards the black man, such as the plaintiff, the racial discrimination to express their racial prejudice against blacks for minorities. Thus is the defendants intentions in so much as unfair treatment, prejudice, discrimination and hatred towards minorities be synonymous state Black's law dictionary. Defendants' intentions are also heard in murmurings invite disparate treatment immediately outside plaintiff's residents. During it is unnecessary to allege the defendants' intentions, whereas here, suit is brought under Act, Federal Fair Housing, 42 U.S.C. § 3601 et seq.. Plaintiff notes that: inter railia, defendants intentions are to inflict intraracial discrimination upon plaintiff by conspiracy, plaintiff alleges the intentions of the defendants' to fit where as here suit is also brought under 42 U.S.C. § 1981, 1982 & 1985 (3).

(3) On June 8, 1999, plaintiff attempted to engage in residential real estate related transactions and met all necessary qualifications and the same is setout plaintiff's exhibit C-1 filed simultaneously herewith in response to mandatory disclosures. The defendants refused to do business with plaintiff while the defendants continue to do business with applicants with similar qualifications as the plaintiff, and the property which plaintiff proposed to purchase remain available for sale thereafter. The defendants did such also by ratification as plaintiff attempted to engage in residential real estate related transactions and it all necessary quali-

fications as shown in plaintiff's exhibit C-1 which files simultaneously herewith in support of complaint and in response to mandatory disclosures, and the owner of the property which was for sale refused to do business with plaintiff, and property sought to be purchased remained available for sale thereafter, and the owner of the property continued to do business with applicants who have similar ability as the plaintiff to pay back the loan which is set out in plaintiff's exhibit C-1 noted ante- herein.

(4) As the defendants advertised the home loan available at 1% down & possible 5.5% APR interest but refused to such to plaintiff. Plaintiff claims that the defendants as real estate agents whether principal or agent of principal relate to plaintiff a different rate, than that rate relayed to the general public or prospective white homebuyers when them, meaning the defendants, refused to do business with the plaintiff see plaintiffs exhibit C- 3 file and support of his complaint and in response to mandatory disclosures.

(5) April 26, 1999 plaintiff attempted to rent an apartment from the Clarirmont Lodge which is located at 10108 Cannon Farmhill Road Atlanta GA, 30329, for the rate relayed to the plaintiff by Clairmont lodge which is set out in plaintiff's exhibit C. file simultaneously herewith in support of this complaint and response to mandatory disclosures, Clairmont Lodge refused to rent to the plaintiff for the quoted rate even though the quoted rate relied upon by plaintiff in deciding to continue to residing at the Clairmont Lodge. Plaintiff alleges that Clairmont Lodge in refusing to rent to plaintiff for the quoted rate committed fraud against plaintiff in violation of 42 U.S.C. § 3601, 1981, 1982. Moreover, plaintiff has experienced parading outside of his apartment at the Clairmont Lodge and there are

made by such for paraders slanders against plaintiff and or verbal assaults because of plaintiffs having complained to the accounting office of the Clairmont Lodge about the rate discrepancy. Also there is disparate impact outside of plaintiffs apartment which particularly defame plaintiff because plaintiff file two prior suits in this court, such suits being civil actions No. 1: 98 -CV-2901 WBH (Dean vs. Peach States Mortg. Corp., et al) and Case No. 1: 99 -CV-1127 WBH (Dean vs. Banner Ford Inc. et al). Plaintiff claims that because the general complaint of parader be because the suits are brought because of racial discrimination against plaintiff, the paraders particularly and unlawfully prohibits suits for racial discrimination. Likewise discrimination is also experienced by plaintiff in employment, which plaintiff may deal with later, but plaintiff here claims that since the parading immediately outside of plaintiff apartment intend to discriminate against plaintiff's right under 42 U.S.C. § 1981 to bring suit for breach of contract, racial discrimination in housing, automotive warranty and service contracts, because plaintiff complained of rent discrepancy, plaintiff claims that Clairmont Lodge may be properly joined in this action as a coconspirator to display its racial hatred against plaintiff and other minorities.

(6) Defendants, Willis B. Hunt, in civil action No. 1: 98-CV-2901WBH filed in this court and cited ante-herein, refuse to appoint an attorney to the plaintiff upon plaintiff request made in pursuance of 42 U.S.C. § 3613(b) (1) suspicious at plaintiff will not be able to conduct the case without an attorney, so that defendant Hunt may satisfy his appetite to discriminate against the plaintiff, to display racial prejudice against plaintiff and other minorities. Undoubtedly he is layed by the plaintiff's ability. De-

fendant Hunt tend to violate 42 U.S.C. § 3604(f)(3)(B) to aid the defendants collectivelyin their intentions cited ante-herein and defendants collectively either by agency or doctrine of respondeat superior rely on Mr. Hunt to act as such which the law prohibits as shown anterior herein. Defendants denied full and equal benefits.

JURISDICTION:

Jurisdiction of this court is invoked under 42 U.S. C. § 3613 (a) (1) (A) and 28 U.S.C. § 1343.

PLAINTIFF'S DEMAND FOR RELIEF:

1) Plaintiff demand that defendants have discriminated against plaintiff by means of racial discrimination in housing, in the right to make and enforce contract, and the right to sue, be a party, give evidence and to the enjoy of the full and equal benefit of all laws for the protection of person and property and especially, 42 U.S.C. § 3604 (a),(b), (f)(3)(b) & 1981.

2) Plaintiff demand that this court appoint an attorney to assist plaintiff in this action and civil action no. 1-98-CV-2901 42 § 3613(b)(1) & 42 U.S. C. § 3604(f)(3)(b).

3) Plaintiff demand that Willis B. Hunt, in joining in conspiracy with other defendants in this action, be enjoined to cease to participate in this action and civil actions nos. 1:98-CV-2901 & 1:99-CV-1127 as a judge since he is acting without the scope of his official duties in conspiring against the plaintiff.

4)Plaintiff demand $95,000.00 in actual damages from each defendant and $10,000.00 in punitive damages in pursuance of 42 U.S.C. § 3613(c)(1) and 1983(2)(3).

v) Plaintiff demands that plaintiff's prior actions be assigned to another judge.

VERIFICATION:

The plaintiff, Thomas G. Dean hereby declare,

under penalty of perjury, that the foregoing is true and correct. This 16th day of October, 1999. signed Thomas G. Dean ***{end of complaint}***

Clearly, complaint should only be a letter to the court relaying the transactions and events which plaintiff believe produced a claim against the defendants, but it need not be in a special or prescribed form when no prescribed form exist. **Rule 9 of the Fed. Rul. Civ. Proc. clearly provides that no special form of pleading shall be required: In civil rights case, on motion to dismiss for failure to state a claim, court requires no more from allegations of intent than what would satisfy notice pleading minimum under rule 8 and requirement of rule 9(b) Fed. Rul. Civ. Proc., that motive and intent be alleged generally. Hodges by Hodges v. Pub. Bldg. Com'n of Chicago, 1994 864 F.Supp. 1493; see also, In order to maintain claim for relief plaintiff need only allege generalized statement of facts from which defendant will be able to frame a responsive pleading; if claim is sufficient based on any viable theory, court must deny motion to dismiss. Budnick vs. BayBank, Inc., 1996, 921 F. Supp. 30. Complaint need not the state facts nor law and complaint is not tied to a legal theory. La.Porte County Republican Cent. Committee vs. Board of Commissioners of County of La.Porte 7th Cir., 1994, 43 F.3d 11 26. Complaint need not specify correct legal theory or point to right statute to survive motion to dismiss the failure to state of claim. Pope v. Inland Property Mgmt., Inc., 1995, 878 F. Supp. 1114. Complaint will withstand motion to dismiss for failure to state a claim if complaint alleges specific conduct violating plaintiffs rights, time and place of that conduct. Briley vs. City of Tenton, 1995, 164 Federal Rule of Decision 26. Although for purposes of motion to dismiss for failure to state a claim, court may**

not look beyond pleadings, documents incorporated by reference into pleadings and all documents attached to the pleadings are exhibits, are considered a part of the pleading for all purposes Marie O. Vs. Edgar,1994, 157 FRD 433. When defendant moves for judgment on the pleadings, factual allegations of the complaint or treat as true, but those of the answer are taken as true only when they are not denied or do not conflict with the complaint. Tollison vs. B. & J. Mach. Co. Inc. 1993, 812 F. Supp. 618. Motion to dismiss for failure state a claim and motion for judgment on the pleadings are unitary. Rule 12(h)(2) Fed. Rul. Civ. Proc.; Allstate Financial Corp. vs. U.S., 1994, 860 F. Supp. 653; Massachusetts Candy & Tobacco Distributor vs. Golden Distributors Ltd.,1994, 852 F. Supp. 63; Carey vs. Conrail, 1992, 810 F. Supp. 164. To state a claim sufficient enough to withstand motion to dismiss plaintiffs need only allege, what plaintiff did in this case, that: (1) they are a member of the protected class, (2) who sought and were qualified to rent or purchase apartment or dwelling, and (3) were denied opportunity to rent or purchase apartment or dwelling, and (4) the apartment or dwelling remained available thereafter. Keeney v. Kemper Nat'l Ins. Co., 1997, 960 F.Supp. 617; see also, Gilligan v. Jameco, 9th Cir., 1997, 108 F.3d 246; Lauer Farms, Inc., v. Waushara County Brd. of Adj., 1997, 986 F.Supp. 544; Alliance for the Mentally Ill v. City of Naperville, 1996, 923 F. Supp. 1057; Robinson v. City of Friendswood, 1995, 890 F.Supp. 616; U.S. v. Mass., 1996, 910 F. Supp. 21; Ring v. First Interstate Mortg. Inc., 8th Cir., 1993, 984 F.2d 924. Allegations of the complaint clearly said a claim upon which relief could be granted and such statement should have been treated as true and not denied and accordingly, petition for writ should be granted to reverse judgment.

CS.NO. *01 - 356*

UNITED STATES SUPREME COURT

PETITIONER,

THOMAS G. DEAN

V.

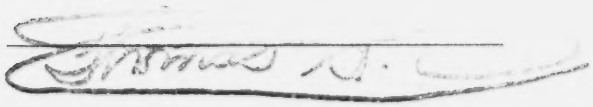
RESPONDENTS,

CHASE MANHATTAN MORTGAGE CORP., RESURGENCE MARKETING & REAL ESTATE, FORREST HOMES, US DEPT. OF HUD, US DISTRICT JUDGE WILLIS B. HUNT, AND THE CLAIRMONT LODGE.

SUPPLEMENTARY BRIEF FOR PETITIONER

APPENDICE' BELOW

THOMAS G. DEAN
3162*F* BRIARCLIFF RD.
ATLANTA GEORGIA 30329
(404) 929-9437
THE PETITIONER



BEST AVAILABLE COPY

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for the Northern District of Georgia
Atlanta Division

Plaintiff,

Thomas G. Dean

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1:99-cv- 2218

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JURISDICTION:

Jurisdiction of this court is invoked under 42 U.S. C. § 3613 (a) (1) (A) and 28 U.S.C. § 1343.

PLAINTIFF'S DEMAND FOR RELIEF:

1) Plaintiff demand that defendants have discriminated against plaintiff by means of racial discrimination in housing, in the right to make and enforce contract, and the right to sue, be a party, give evidence and to the enjoy of the full and equal benefit of all laws for the protection of person and property and especially, 42 U.S.C. § 3604 (a),(b), (f)(3)(b) & 1981.

2) Plaintiff demand that this court appoint an attorney to assist plaintiff in this action and civil action no. 1-98-CV-2901 42 § 3613(b)(1) & 42 U.S.

C. § 3604(f)(3)(b).

3) Plaintiff demand that Willis B. Hunt, in joining in conspiracy with other defendants in this action, be enjoined to cease to participate in this action and civil actions nos. 1:98-CV-2901 & 1:99-CV-1127 as a judge since he is acting without the scope of his official duties in conspiring against the plaintiff.

4)Plaintiff demand $95,000.00 in actual damages from each defendant and $10,000.00 in punitive damages in pursuance of 42 U.S.C. § 3613(c)(1) and 1983(2)(3).

v) Plaintiff demands that plaintiff's prior actions be assigned to another judge.

VERIFICATION:

The plaintiff, Thomas G. Dean hereby declare, under penalty of perjury, that the foregoing is true and correct. This 16th day of October, 1999. signed Thomas G. Dean

In the United States District Court
for the Northern District of Georgia
Atlanta Division

Thomas G. Dean
vs. -
Chase Manhattan Bank et al

Civil Action File No.
1:99-cv-2218

PLAINTIFFS RESPONSES TO
MANDATORY DISCLOSURES

(1) State precisely the classification of the cause of action being filed, a brief actual outline of the case including plaintiffs contentions as to what dependent gate or failed to do, and a succinct statement of the legal issues in in the case?

See the First, Second, Third Affidavits And Statement of the Issues Involved Attached Hereto

(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and the illustrated case law which plaintiff contend are applicable to this action?

See Fourth Affidavit of Plaintiff, Thomas G. Dean Attached Hereto

(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to dispute facts alleged with particularly in the pleadings identifying the subjects of the information. (attach witness list to the responses to mandatory disclosures as attachment A.) ?

(4) Provide the name of any person who may be used at trial to present evidence under rules 702, 703, 705 of the Federal Rules of Evidence.for all experts described in Fed. Rul. Civ. Proc. 26 (a) (2) (B), provide a separate written report satisfying the provisions of that rule. (Attached expert witness list and written reports to responses to mandatory disclosures as attachment B.) ?

(5) Provide a copy of , or a description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that are relevant to dispute facts alleged with particularity in the pleadings (attached document list and descriptions to responses to mandatory disclosures as attachments C.) ?

(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of or described by category and location of, the documents and of the evidentiary matter, not privilege or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of the injury suffered, making such documents the evidentiary material available for inspection and copying as under Fed. Rul. Civ. Proc. 34. (Attach any copies and descriptions to responses to mandatory disclosures as attachment D.) ?

See the fifth and sixth affidavits of Thomas G. Dean attached hereto as attachments C&D.

(7) Attach for inspection and copying as under Fed. Rul. Civ. Proc.34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this case or to indemnify or reimburse the payments made to satisfy the judgment. (attached copy of insurance agreement to responses to mandatory disclosures as attachment E.) ?

(8) disclose the full name,address, and telephone number of all persons or legal entity entities who have a subrogated interest in the cause of action set forth in plaintiffs cause of actionand state the basis and extent of such interest?

None

Respectfully submitted this 23rd day of August , 1999.

Thomas G. Dean
signature
Thomas G. Dean
print
1304 Cannon Farmhill Road
address
Atlanta GA,30329
City,State,Zip

Signed: Robert Persky
Notary Public
Dekalb County, Georgia
Expires: July 31, 2001
Date: 8-23-99

Plaintiff's Exhibits (2)

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Plaintiff,

Thomas G, Dean

vs. **CIVIL FILE NUMBER:**

Defendants, **1:99-cv-2218**

Chase Manhattan Bank, Forrest Homes, Resurgence Marketing & Real Estate Inc., U.S. Department of Housing & Urban Developement, Willis B. Hunt and the Calirmont Lodge.

FIRST AFFIDAVIT OF THOMAS G. DEAN

I, Thomas G. Dean, being of mature age discretion hereby makes this affidavit in support of the complaint and in response to mandatory disclosures for use throughout this action alone and at every proceeding inwhich affidavit may be used as evidence in this action. I make this affidavit upon personal knowledge.

On or about June 8,1999, plaintiff, Thomas D. Dean, in response to a newspaper advertisements in the Atlanta Journal Constitution, inquired to Resurgence Marketing and Real Estate Inc. about buying a home at the Rivercrest subdivision in Dekalb County. The advertisement of Resurgence of Marketing and Real Estate Inc. relayed that the homes for sale at the Rivercrest sudivision were being sold for 1% down payment and monthly payment starting at $$726.00 P. I. T. & I, presumably, 30 year fixed-rate mortgage. Plaintiff was particularly interested in this ad because plaintiff had previously sought to buy a home in Rivercrest subdivision but was denied unlawfully, and purportedly because plaintiff was a bankrupt debtor under chapter 13 of Title 11 U.S.C.. Upon which plaintiff filed suit under Federal Housing Act, 42 U.S.C. § 3601.... The civil action was docketed in the United States District Court for the Northern District of Georgia,

Atlanta Division, as Case No. 1: 98- cv- 2901. The details of this case is almost the same as the details of civil action No. 1: 98-cv- 2901. After making application for a home, plaintiff was directed by the owner of property, and by contract for sale of the property, to apply for a loan at the Chase Manhattan Mortgage Bank located at 1777 Phoenix Parkway Atlanta 30349. This time as the last time, plaintiff was denied loan application by Chase Manhattan because plaintiff could not provide income tax returns for the last two years despite the fact that the housing regulations Code of Federal Regulations require that an applicant is only required to qualify for home loan by showing sufficient gross income. Gross income, as defined by housing regulations of the Code of Federal Regulations is the applicant's annual income without deduction for income taxes. Accordingly it appears that Chase Manhattan did not have authority to require income tax papers as such papers are not required to show annual gross income, and therefore, plaintiff brings this action. Also, while making application to Resurgence Marketing & Real Estate Inc., paintiff observed the lips of Ms. Sonjia Williams called plaintiff an nigger. Therefore, plaintiff claims racial discrimination of Resurgence Marketing and Real Estate Inc., Forrest Homes, as Forrest Homes in its contract of sale, require that an applicant use only mortgage companies approved by its and it employs Resurgence Marketing & Real Estate Inc. and Chase Manhattan Bank., and Sonjia Williams who called plaintiff a nigger. Plaintiff also brings action against the United States Department of Housing and Urban Develepement as it appears C-3 attached hereto, that the Federal Housing Authority, authorized or ratifies the act of the other defendants with respect to requirements of income tax information to qualify for a loan. (see under the heading in exhibit C-3 what FHA loan programs are available under this program).

VERIFICATION

The plaintiff, Thomas G. Dean, hereby declare, under penalty of perjury, that the foregoing is true and correct.
This 23rd day of August, 1999.

Signed: Thomas G. Dean
1304 Cannon Farmhill Rd.
Atlanta Georgia, 30329

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Plaintiff,

Thomas G. Dean

vs. **CIVIL FILE NUMBER:**

Defendants, **1:99-cv-2218**

Chase Manhattan Bank, Forrest Homes, Resurgence Marketing & Real Estate, U.S. Depaertment of HUD/FHA, Willis B. Hunt and the Clairmont Lodge.

SECOND AFFIDAVIT OF THOMAS G. DEAN

I, Thomas G. Dean, being of mature age and discretion:, hereby makes this affidavit in support of the complaint and in response to mandatory disclosures, for use in this action alone, at anytime throughout this action, in any proceeding in which affidavits may be used to present evidence, I make this affidavit upon personal knowledge.

On Feb. 8 1999, plaintiff received a letter from the Clairmont Lodge where plaintiff has been a resident since May, 1994. The letter attached hereto as plaintiff exhibit C-4, stated that the Clairmont Lodge was terminating all innkeeper or lease agreements with all occupants at the Clairmont Lodge effective April 25 1999. This was not unusual because Clairmont Lodge had terminated the lease agreement several time during plaintiff's stay there. However, on Feb. 12 1999, plaintiff received another letter from Clairmont Lodge wh:ich stated as follows:

" Dear Clairmont Lodge guests:

Many of you are confused by the letter you receive this week about the termination of the innkeeper-occupant agreement.

We want to clarify several issues. The most important is that we are not terminating your stay at Clairmont Lodge. In the future, we will be unable to offer a monthly fee.

Our fee will be charged by the week, however, we will offer a four-week discounted fee. Your fees will be based on your current rate, and will not be changed at this time. Therefore, the only difference under the new system will be your payment due date. Your payment due date will be a specific day of the week, as opposed to your current monthly date.

It is necessary for you to come into the office and sign our updated forms by the expiration date stated in the letter previously sent.

The office staff is available Monday through Friday, 8:30 AM to through 7:00 PM to answer any questions you may have.

Sincerely,

Mary Hilmer
Manager"

{End Plaintiff's Exhibits C-4 thru C-5}

Plaintiff completed the applicable documentation to renew his stay at the Clairmont Lodge and, on June 20 1999, plaintiff answered a knock on his door from the maintenance department of the Clairmont Lodge, who had come to lock plaintiff out of his apartment, by orders of the accounting department of the Clairmont Lodge. This baffled plaintiff because according to plaintiff's calculation, plaintiff's rent was not do for another four or five days. Plaintiff relayed this information to the maintenance man who came to lock plaintiff out. The maintenance man radioed to accounting office and told them that plaintiff stated that his rent is not currently do, but the accounting office insisted that the maintenance man lock plaintiff out. Plaintiff went into the accounting office to inquire further on the reason for the lockout as plaintiff was not aware of depletion of his fees previously paid. The accounting office claimed that my fees had expired at 12:00

PM of June 20 1999 even though as before the signing of the new lease agreement plaintiff had paid fees in the amount of his previous monthly amount $385. The accounting office stated that the $385 only covered four weeks now and not one month. However, by plaintiff's calculation, $385 covered a period of 30.4 days according to the second letter sent to plaintiff and mark plaintiff's exhibit C-5 attached hereto. Since this letter stated that plaintiff's new fees would be based upon his current rate, $385 covers 30.4 p each month as opposed to it covering 31 days in months having 31 days and 29 days for February. Previously, regarding regardless of the number of days in the month, plaintiff was required to pay $385 or whatever was the monthly rate, on the 25th of each month regardless of the amount of days in the month. Clairmont Lodge's letter stated that such fees would not be changed but it has required plaintiff to pay more without notice to plaintiff nor has plaintiff approved this new fee. Plaintiff calculation is make as follows:
There are 365 days in one year;
divided by 12 months;
which equals 30.4 days per month

According to the new monthly rate, though unstated would cover for weeks and twodays uniform throughout the year regardless of the actual number of days in a month. Therefore plaintiff claims that Clairmont Lodge is overcharging plaintiff and depriving plaintiff of two days or $25.33 each time plaintiff pays it $385 by holding $385 as a four-week rate without notice to plaintiff as setout in it's letter of February 12, 1999 attached hereto as Plaintiff's Exhibit C-5.
Accordingly Clairmont Lodge breached contract of the acceptance of the letter sent to plaintff
on February 12, 1999 when it change the rate and stated or provided that the rate would not be changed. Since a breach of agreement amounts to prejudice and prejudice, discrimination, unfair treatment and hatred of minorities be synonymous plaintiff claims that Clairmont Lodge's

actions are racial discrimination especially since the majority of the tenants at Clairmont Lodge are black or minorities. After plaintiff complained of the rate discrepancy, plaintiff observed someone to the outside of his apartment, probably the employee of Clairmont Lodge whom plaintiff complained to about the lockout, utter defamation at plaintiff because of the plaintiff having made the complaint. Plaintiff state that this to its prejudice and or racial discrimination against plantiff. Also, there are utterings at Clairmont Lodge which seem to protest prior suits filed by plaintiff of which plaintiff assumed to be the tenants or some of them who being acquainted with persons involved in the prior suits but, since one of the utterings seem to implicate staff of Clairmont Lodge, plaintiff claims that Claremont Lodge actions are racial discrimination in unlawful protest of plaintiff having file prior suits for racial discrimination and intended to display its hatred toward plaintiff and other minorities, since the utterings of the tenants seems to suggest such.

Accordingly plaintiff claims that Clairmont Lodge is liable under the doctrine of disparate impact and respondeat superior.

VERIFICATION

I, Thomas G. Dean, hereby declares, under penalty of perjury, that the foregoing is true and correct.
This 23rd day of August, 1999

sign Thomas G. Dean
1304 Cannon Farmhill Road
Atlanta GA 30329
plaintiff

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Plaintiff,

Thomas G. Dean

CIVIL FILE NUMBER

vs **1:99-CV-2218**

Defendants,

Chase Manhattan Bank, Forrest Homes, Resurgence Marketing & Real Estate Inc. U.S. Department of HUD/FHA, Willis B. Hunt and the Clairmont Lodge.

THIRD AFFIDAVIT OF THOMAS G. DEAN

I, Thomas G. Dean, being of mature age discretion, hereby make this affidavit on personal knowledge, and in support of the complaint and responses to mandatory disclosures, and for all of the permissible procedures throughout course of this action, wherein affidavits may be used to present evidence.

On October 5, 1998, I filed suit under the fair housing act of the United States (42 U.S.C. § 3601...) The case was docketed as 1: 98-cv- 2901WBH (Dean vs. Peach State Mortgage Corporation. ...) (in the United States District Court, for the Northern District of Georgia Atlanta Division) simultaneously with the serving of the complaint and summons, plaintiff, (being myself), served motion for appointment of attorney by the court pursuant to 42 U.S.C. § 3613(b) (1) which states as follows:

(b) Appointment of attorney by the court

Upon application by a person alleging a discriminatory housing practice or a person against whom a discriminatory practice is asserted, the court may---

(1) appoint an attorney for such person;. ...

Under 42 U.S.C. § 3613 (b) (1), in civil actions under this section, the United States may bring action on behalf of an agrieved individual. U.S. vs. Scott, D.C. Kan, 1992, 809 F. Supp. 1404; see also whight vs. Pence, 8 Cir. 1992, 961 F.2d 776, also, U.S. vs. Forest Dale, Inc. 1993, 818 F. Supp. 954.

Plaintiff recognizes that when court undertakes to appoint an attorney for a litigate pursuant to this statute, court must appoint someone who is willing to serve in the action and may not force anyone to act as attorney, including parties requesting assistance of attorney. Appointment of attorney is for governmental purposes and not device for the court to evade action in pursuance it's personal prejudice towards others. It does not make a difference if complaint or answer filed by party state a claim or defence, before court may appoint an attorney to ensure proper presentment of any possible claim or defence. The government has, by statute, undertaken to appoint an attorney for any party to a fair housing suit upon application, and there is no constitutional provision negating that right to appointment of attorney in housing suits. The statute authorizes appointment of attorney whether or not party is indigent, or whether or not party properly understand in the suit. Defendant Hunt will undoubtedly seek representation for himself but, he does not find it necessary to seek assistance of attorney for plaintiff who has the first lien to government attorney assistance in this action where such lien flows from prior abused request for appointment of attorney. A requests for assistance of attorney by Mr. Hunt in this action without motion should not be permitted as such request is against public policy, because the Attorney General find that an action under the fair housing act is of general public importance. See United States vs. Northside Realty Associates Inc. C. A. Ga., 1975, 518 F.2d 884: Given liberal meaning to the word once, once a determination of an issue of public importance has been made, by an Attorney General, the government was the party and the case proceeded, it is

not necessary for a new Attorney General to re-examine case for a fresh determination that an issue of public importance exists. *Id. Also, giving proper definition to the* word "if" in 42 U.S.C. § 3613 (b), in the passage: [if the attorney general certifies that the case is of general public importance.], Attorney General has already certify that suit under federal fair housing act is of general public importance. Accordingly parties may obtain relief provided in 42 U.S.C. § 3614 (e) only. Plaintiff note that in the prior action plaintiff is entitled to judgment in his favor as, the defendants in prior action, being mortgage corporations, refused to provide mortgage to plaintiff because plaintiff was in bankruptcy under chapter 13 of title 11 U.S.C.. However, plaintiff note that even if the yearly sum of all installments to be paid to bankruptcy trustee during a year was deducted from plaintiff annual gross income plaintiff would still have adequate income to pay for mortgage sought. With all due respect, plaintiff claims that, except for one being civil and the other being criminal, provisions of 3613 (b)(1) are identical to criminal statute authorizing appointment of attorney to the extent that such is required by application, and the failure of the court to appoint attorney when application is made amounts to inadequate counsel and harmful error. And while plaintiff's application sought assistance of counsel to prepare for trial, plaintiff did not intend, in making the motion, to waive his option to move for summary judgment or for judgment by default where appropriate or to settle the case in any other manner with assistance of attorney for plaintiff. However, plaintiff claims that Judge Willis B. Hunt merely denied plaintiff's application to satisfy its personal ambit to display his hatred toward plaintiff and other minorities including prisoners, and to falsely imprisoned or detained plaintiff in plaintiff's right to equal protection the law and to unlawfully retained financial superiority as compared to plaintiff. 42 U.S.C. § 3613 (b)(1) requires the court to appoint an attorney for the plaintiff, not for the judge acting with personal rather than judicial ambition.

Appointment of attorney by the court under 42 U.S.C. § 3613 (b) (1) is a benefit for the protection of person and property, and even government officers, employees or agents are not immune from the requirements of 42 U.S.C. § 1981 that all citizens of the United States shall have the same right, as is enjoyed by white citizens, to full and equal benefit of all laws and proceedings of the protection of person in property.... Willis B. Hunt's act, in discriminating against plaintiff to retain financial superiority as compared to plaintiff is prejudice and as such is discrimination against plaintiff because of plaintiff's race because deprivation of private property by unlawful means is not conduct enjoyed by white citizens of the country. Inception to decieve, that one is sufficient attorney, never in tending to permit such a one as sufficient attorney, amounts to fraud or conversion and deprivation of rights by means of racial discrimination, and is unlawful, under 42 U.S.C. § 1981.

VERIFICATION

I, Thomas Dean, hereby declare, under penalty of perjury, that the foregoing is true and correct.

This 23rd day of August, 1999.

Signed Thomas G. Dean
1304 Cannon Farmhill Rd.
Decatur GA, 30329
plaintiff

UNITEDSTATES DISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Plaintiff, Thomas G. Dean

vs. **CIVIL FILE NUMBER 1:99-CV-2218**

Defendants,

Chase Manhattan Bank, Forrest Homes, Resurgence Marketing & Real, Estate Inc., U.S. Department of HUD/FHA Willis B. Hunt and theClairmont Lodge.

STATEMENT OF THE LEGAL ISSUES INVOLVED INSTANT

The plaintiff hereby certifies that the following issues are involved in this case:

1) Weather plaintiff is a black person or a member of a racial minority for purposes of action under Fair Housing Act, 42 U.S.C.§ 3601... and the Federal Civil Rights Law 42 U.S.C. § 1981....

2) Weather plaintiff has attempted to engage in residential real estate related transactions and met all necessary qualifications and, whether Chase Manhattan Bank Forrest Homes Resurgence Marketing and Real Estate Inc. have refused to sell to plaintiff despite plaintiff qualifications as such qualifications be set out in plaintiff exhibit C.-1 attached hereto and whether the defendants continue to sell to persons or applicants who have similar ability to pay back to the loan as plaintiff's ability, and whether property which plaintiff sought to purchase remain available for sale after defendants rejected plaintiff's offer.

3) Whether Fair Housing Regulation of CFR provide that gross income is defined as the applicants income without deductions for income taxes and whether the defendants have deducted income taxes from plaintiffs in-

come in requiring plaintiff, as well as other black persons to provide income tax information to obtain a loan.

4) Weather Resurgence Marketing & Real Estate Inc., Forest Homes and Chase Manhattan Bank has violated 42 U.S.C. § 3604 in treating plaintiff or all-black applicants different in requiring income tax information contrary to requirements of their housing regulations of 16 CFR. See Monsler. vs. Cincinnati cas ins com.,1991, 598 N.E.2d 1203, 74 Ohio App 3d 321.

5) Whether the United States Department of HUD, Federal Housing Authority, has ratified the unlawful acts of Chase Manhattan Bank, Forrest Homes and Resurgence Marketing & Real Estate Inc. in requiring income taxes to be deducted to determine gross income of black homebuyers prospects.

6) Whether Clairmont Lodge has converted funds of the plaintiff, and other minorities, in raising rent rate without notice to plaintiff and the other minorities who reside at Clairmont Lodge.

7) Whether Willis B. Hunt has violated 42 U.S. code § 3601... in refusing to appoint attorney to plaintiff and other minorities while acting contrary to 42 U.S.C.§ 3613 (b)(1) to maintain financial superiority as compared to the plaintiff.

VERIFICATION

The plaintiff, Thomas G. Dean, hereby declares, under penalty of perjury, that the foregoing statement of legal issues involved in the instant case are true and correct.

This 23rd day of August 1999.

Signed: Thomas G. Dean

IN THE UNITED STATESDISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Plaintiff,

Thomas G. Dean

vs. **CIVIL FILE NUMBER**
1:99-CV-2218

Defendants,

Chase Manhattan Bank, Forest Homes, Resurgence Marketing & Real Estate Inc., U.S. Department HUD/FHA, Willis B. Hunt, and the Clairmont Lodge.

FOURTH AFFIDAVIT OF THOMAS G. DEAN

Subject to the complaint and the first, second and third affidavits of plaintiff Thomas G. Dean, this is a suit under the fair housing act of the United States 42 U.S.C. § 3601.... The jurisdiction of this court is invoked under 42 U.S.C. § 3613. Plaintiff brings this action against Chase Manhattan Bank, Forest Homes and Resurgence Marketing & Real Estate Inc. because as principles and agents, the defendants refused to sale plaintiff a home or otherwise finance a purchase of home a purportedly because plaintiff could not produce the last two years income tax returns. However, plaintiff claims that this action, because plaintiff claims that 24 CFR § 203.33 states that:

(a) Adequacy of Mortgagors Gross Income.

"A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet:

(1) the periodic payments required by the mortgage submitted for insurance: and

(2) other long-term obligations.

(b) determination of adequacy of mortgagors income under this section shall be uniform without regards to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location the property."

§ 5.609, (b) provides that annual income means and includes and not limited to:

"The full amount before any payroll deductions of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and all other compensation for personal services.... "

Under 24 CFR § 5.609 (b) (1), plaintiff claims that the defendant, Chase Manhattan Bank did not have a right to require income tax information from the plaintiff, nor could it reasonably use income tax information as basis for denying an application for residential mortgage. Plaintiff claims that there was no more to learn for the defendant, in plaintiff's income tax information as, plaintiff reported (or listed) all income as it wasn't being shown on forms 1099. Expenses which could have been reported on income tax return, could not be used to reduce amount of gross (or applicable) income shown on forms 1099. Nor was there any other long-term in debts to be reported by plaintiff even if plaintiff was insolvent. Information of the plaintiff dependents could not be used to diminish gross (or applicable) income because such would be discrimination because of familial status, or marital status. However, plaintiff has no dependents other than himself and this was delayed a to the defendants. Plaintiff is a bankrupt debtor, and as such, plaintiff has no other long-term obligations outside of the Bankruptcy Court. All other debts have had been either paid off or denied as not voluntarily contracted. The Same is shown in the first affidavit of plaintiff. Plaintiff claims that the defendants were conspiring against plaintiff because of plaintiff's race

or sex where Ms. Sonjia Williams referred to plaintiff as nigger while it is not necessary for plaintiff to prove the intentions of the defendants to discriminate under 42 U.S.C. § 3601.... (Fox vs. Depart. of HUD, 1979, 468 F. Supp 907; U.S vs. Reece, 1978, 457 F. Supp. 43; U.S. vs. Housing Authority of chickasaw, 1980, 504 F. Supp. 716; Huertas vs. East River Housing Court, 674 F. Supp. 440. Plaintiff claims that defendant intended to discriminate against plaintiff because of plaintiff's race and quite possibly because of prior housing suit against the subdivision. Plaintiff also perceive that discrimination was because of the plaintiff's sex and absence of marital and familial status.

2)Plaintiff brings this action against the Federal Housing Authority because the offering statement shown as exhibit C-3 attached hereto does not contain or display a Federal Housing Authority disclaimer which is required by 24 CFR § 1715.50. Accordingly plaintiff claims that as to the foregoing, Chase Manhattan Bank, Forrest Homes and Resurgence Marketing and Real Estate Inc., did not have a right to determine adequacy of plaintiff's income under 24 CFR § 203.33 as such determination is to be made to by the Secretary of housing but, if the Secretary of housing has delegated such authority to determine to the real estate agents and mortgage companies or property owners, especially as here, where an insured mortgage is required by the owner of the property, Secretary may also be liable for the racial discrimination of the other defendants under 24 CFR § 1715.25 (P.), and doctrine of respondeat superior as having ratified the acts of the other defendants.

3) Plaintiff bring this action also pursuant to 42 U.S.C. § 3613 (b)(1) against Willis B. Hunt who failed in plaintiff's previous action to award an attorney to assist plaintiff in this matter. Plaintiff also bring action pursuant to 42 U.S.C. § 1981 against Mr. Hunt as plaintiff claims

that Mr. Hunt's action in denying plaintiff assistance of counsel, is for the purpose of displaying racial hatred against plaintiff and to refuse plaintiff as a witness because plaintiff is a black man. Plaintiff claims that in so doing, Mr. Hunt unlawfully and deny plaintiff full and equal benefit of all laws and procedures for the protection of person and property and Mr. Hunt violate 42 U.S.C. § 1981.

Under 42 U.S.C. § 1981, as jurisdiction is invoked under 28 U.S.C. § 1343 by plaintiff, cause of action for racial discrimination against the United States is not barred by sovereign immunity. See Henry v. Schlesinger, 1976, 407 F. Supp. 1179; this section prohibiting racial discrimination applies to the Federal Government. Kurylas vs. U.S. Department of Agriculture 373 F. Supp. 1072, affirmed, 514 F.2d 894, 169 U.S. App. D.C. 58; cause of action for damages under 42 U.S.C. § 1981 can be maintained against government officials and employees acting in their officer capacities. Rafferty vs. Prince George's County, 1976, 423 F. Supp. 1045; 42 U.S.C. § 1981 supports a cause of action charging discrimination by officials of Federal Government. NAACP vs. Levi, D.C.D.C. F. Supp. 1109.

4) Plaintiff brings this action against Clairmont Lodge for conversion of offering statement which violated 24 CFR § 1715.20 (c), and for racial discrimination which violated 42 U.S.C. § 3604 and 24 CFR § 1715.20(d).

VERIFICATION

Plaintiff, Thomas G. Dean hereby declare, under penalty of perjury, that the foregoing is true and correct, and is made upon personal knowledge of plaintiff and plaintiff is of mature age and discretion to make the this affidavit.

This 23rd day of August, 1999.

Signed Thomas G. Dean
1304 Cannon Farmhill Rd.
Decatur GA, 30329
plaintiff

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Plaintiff,
Thomas G. Dean
vs. **CIVIL FILE NUMBER**
1:99-CV-2218

Defendants,
Chase Manhattan Bank, Forrest Homes, Resurgence Marketing and Real Estate Inc. U.S. Department of Housing & Urban Development, Willis B. Hunt and the Clairmont Lodge.

FIFTH AFFIDAVIT OF THOMAS G. DEAN

1) Attached hereto, as plaintiff exhibit C-1 is a PITI payement worksheet prepared by the plaintiff. This form unequivocally shows that plaintiff qualified and had sufficient income to repay the loan applied for. This form also show that plaintiff qualified to obtain a loan in which payment could be as high as $764.16. The amount of the monthly payment advertised by the defendants was $726 P. I. T. and I. This advertisement of the defendants could not be changed (at the instance of the plaintiff), as in pursuant to Housing Regulations of the CFR. Moreover this worksheet show that plaintiff qualified for a home loan in an amount up to $120,000.00 at an interest rate of 5.5% if plaintiff made a $10,000 downpayment as he had proposed in his prior requests to purchase a home from the defendants. Moreover, plaintiff could have qualified for even a higher loan if he applied for a greater debt allowance loan such as an no doc loan, which deviate from this form to allow a loan to persons who would not qualified under concept of plaintiff exhibit C-1. Plaintiff claims that he qualified under both concepts.

2) Attached hereto as plaintiff's exhibit C-2 is a copy of the purchase agreement for the property or home chosen by plaintiff from the list of available homes presented by the defendants and marked as plaintiff exhibit C-7. This exhibit shows that the purchase price of the home was $95,000 and the monthly P. I. T. and I was $726. Plaintiff claims that the representation made by the defendants in these two exhibits could not be raised (or changed) as in pursuance of Housing Regulations, 24 CFR § 1715.25 (j), (k) & (p). (and plaintiff now pays more than $726.00 a month as rent for his apartment now.)

3) Attached hereto as plaintiff's exhibit C-3 is a loan information brochure which was given to the plaintiff at the time plaintiff applied to purchase property from the defendants. While this advertised various interest rates, none of which are 5.5 percent over the life of the loan defendant could not changed its advertising made in plaintiff exhibits C-7 of a loan at 5.5 percent as in pursuance of 24 CFR §1715.25 (1), (k) & (p), at least not for higher rate.

4) Attached hereto as plaintiff's exhibit C-4 and C-5 are letter sent to plaintiff by the Clairmont Lodge which provides for the unchanging monthly rate to be used in determining the four-week rate. Plaintiff claimed that from the implications of the defendants, these documents violate 24 CFR § 1715.15 (k)(p). Plaintiff claims further that a lease for the amount being charged by the defendants have not been signed by the plaintiff and therefore Tenancy should be Tenancy at weil of plaintiff under state law.

5) Attached hereto as exhibits C-6 are statements of the plaintiff gross income for the last two years which was being presented to the defendants for verification of the plaintiff gross annual income in connection with the purchase of the property described in plaintiffs exhibits C-2.

6)Attached hereto as plaintiff exhibit C-7 is a list of the homes of which the defendants claim were available at the time plaintiff made application for a home from the defendant. Plaintiff shows that the home applied for by the plaintiff was Lot No. 47 the Adams. Plaintiff claims that this form may very well violate CFR § 1715.25(p).

7) Attached hereto as plaintiff exhibit C-8 is an application completed by the plaintiff at the time plaintiff applied to purchase the property from the defendant. Plaintiff note that even though the application contains all of the information requested therein, Ms. Sonjia Williams had some indecision about plaintiff being able to purchase a home as a bankrupt debtor although contrary to plaintiff's understanding. Plaintiff requested that she submit the application over her objection. However two weeks later she called me back into her office to complete the application, and it is at this time that she uttered the word nigger towards plaintiff. Plaintiff claims that because this application was the only information relayed to the defendant, the defendants' calling the plaintiff a nigger was because of his prohibitions against being denied right to buy a home because he was a bankrupt debtor, however, plaintiff's exhibit C-1 clearly shows that plaintiff qualified for the loan sought at the terms being advertised by the defendants even though he is a bankrupt debtor. See PI T&I worksheets at 2, and 3 this is the amount of plaintiff's monthly debt and the amount being paid to the bankruptcy trustee.

8) Attached hereto as plaintiff exhibit C- 9 is a copy of the business cards given to plaintiff by the defendants from Ms. Sonjia Williams. Including the plaintiff, it is also a list of witnesses to the transaction with respect to Chase Manhattan Bank, Forrest Homes, and Resurgence Marketing & Real Estate Incorporated.

9) Attached hereto as plaintiff exhibit C-10 is a statement from the last two weeks of employment of the plaintiff: it is intended to show that plaintiff is still employed by Speedy Courier Service.

10) Attached hereto as plaintiff's exhibit C-11 is a copy of what would have been plaintiff tax return for 1998, it consists of a form 1040, a form schedule C. and filing requirements charted which shows that based on the information contained in form 1040, accompanied by the form schedules C., plaintiff was not required to file a tax return for the year 1998. In any event plaintiff is definitely not required to answer to the defendants for federal income taxes. *

VERIFICATION

The plaintiff, Thomas G. Dean, hereby declare, under penalty of perjury, that the foregoing is true and correct.
This 23rd day of August 1999

signed Thomas G. Dean
plaintiff

ATTACHMENT C

PITI PAYMENT WORKSHEET

1. What is your total monthly income? (Gross salaries, bonuses, average commissions, alimony and child support, interest and dividend income, etc.) **$3,022.66**

2. Multiply your monthly income by .36 and enter the amount here: **$1,088.16**
(The maximum amount of debt most lenders will allow is 36% of your monthly income, though this figure can be higher for certain affordable housing prograns.)

3. What is your total monthly debt? (Car payments, credit card minimum payments, alimony, child support, and other obligations. Exclude your current rent or mortgage payment, food, clothing, and utilities.) **$0,324.00**

4. Subtract Line 3 from Line 2. This is the amount you can afford for PITI--- your monthly mortgage payment **$0764.16**

How Much House Can You Afford

Use the following worksheet to figure exactly how much you can afford to pay for a house.

1. Enter the amount you can afford for PITI here:(See Line 4 from above worksheet) **$0764.16**

2. Multiply the amount above by .16 (On average, 16% of the PITI payment is held in escrow for property taxes and insurance.) **$0122.26**

3. Subtract Line 2 from Line 1. (This amount equals the principal and interest portion of your monthly payment.) **$0641.90**

4. Consult the Mortgage Payment Calculator Table. Look under the column closest to the current interest rate, and find the closest figure to the amount you entered on line 3 above. Then scan to the left to see how big a mortgage you can afford. Enter the mortgage amount here. **$110,000**

5. Enter the amount you can comfortably afford for a down payment: **$10,000.**

6. Add Lines 4 and 5. The total equals what you can afford to pay for a house. **$120,000**

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Plaintiff,

Thomas G. Dean

vs **CIVIL FILE NUMBER: 1:99-CV-2218**

Defendants,

Chase Manhattan Bank, Forrest Homes, Resurgence Marketing &Real Estate Inc. U.S. The Department of Housing & Urban Development, Willis B. Hunt and the Clairmont Lodge.

SIXTH AFFIDAVIT OF THOMAS G. DEAN

Come now the plaintiff and make this affidavit upon personal knowledge in support of the complaint and mandatory disclosures in support of the complaint, to be used in this action alone, and at any time during this action whenever testimony by affidavit is permitted. Plaintiff, Thomas G. Dean, hereby declares that he is competent is to make this affidavit.

COMPUTATION OF DAMAGES:

Damages are computed with the thought in mind that plaintiff claims that defendants acts are overt acts in furtherance of a conspiracy to deprive plaintiff of fair housing rights, privileges and immunities. Usually the amount of the property involving the action is recoverable. In this case the amount of the property involved is $95,000 as shown in plaintiff's exhibits C-2 file simultaneously here with, (the contract or agreement of sale). In addition, 42 U.S.C. § 3613 allows a maximum penalty of $50,000 in punitive damages. See also Housing Regulations of the CFR. Accordingly, 42 U.S.C. § 1985(3) provides that in an action for conspiracy, plaintiff

may recover damages from anyone or more of the defendants or conspirator's, so, plaintiff claims $95,000 in actual and compensatory damages and $50,000 in punitive damages from each defendant as $95,000 was the purchase price of the home requested by plaintiff and wrongfully denied by the defendants.

VERIFICATION

The plaintiff, Thomas G. Dean, hereby declare, that the foregoing is true incorrect under penalty of perjury.
This 23rd day of August 1999

sign Thomas G. Dean
plaintiff.

* With exception of exhibit C-1 cited anterior, Attachment C is schedule to be filed at a later date in a succeeding volume than herewith.